



**NEVADA COUNTY
TRANSPORTATION COMMISSION**

**ADMINISTRATIVE OPERATING
PROCEDURES**

September 19, 2018

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	ACCOUNTING	1
	A. Deposits	1
	B. Payments	2
	C. Payroll	3
III.	BUDGET	4
	A. Administrative Budget	4
	B. Transportation Planning Budget	4
	C. MOU with Member Jurisdictions.....	4
	D. Master Fund Transfer Agreement with Caltrans.....	5
IV.	GRANT APPLICATION PROCEDURES	5
V.	CONTRACTS.....	5
	A. Professional Services Contracts	5
	B. Work Orders.....	6
	C. Subrecipient Agreements	6
VI.	PURCHASING POLICIES AND PROCEDURES.....	8
	A. General Provisions	8
	B. Procurement of Office Supplies and Equipment.....	11
	C. Awarding of Contracts	15
	D. Additional Bidding Procedures	20
	E. Modification or Amendment of Contracts	24
	F. Contract Forms and Approvals	25
VII.	MANAGEMENT OF CAPITAL ASSETS	26
VIII.	DISPOSAL OF SURPLUS PROPERTY	26
	A. Fixed Assets	26
	B. Capital Assets.....	26
IX.	RECORDS RETENTION POLICY	26
	NCTC RECORDS RETENTION SCHEDULE.....	29
	Attachment A – NCTC Subrecipient Agreement	31
	Attachment B – Cost or Price Analysis	46
	Attachment C – History of the Procurement	50
	Attachment D – Documentation of Quotations Acquired by Telephone	51
	Attachment E – Guidelines for Criteria and Considerations in Evaluating RFPs	52
	Attachment F – Sole Source Approval	53

ADMINISTRATIVE OPERATING PROCEDURES

I. INTRODUCTION

Nevada County Transportation Commission's (NCTC) Administrative Operating Procedures are approved by the Commission. The procedures may be modified by the Commission, based on recommendations made by the Executive Director, the Nevada County Auditor-Controller, NCTC's fiscal and compliance auditor, or NCTC's legal counsel.

The Executive Director has oversight and signature approval for staff procedures involving accounting, budgeting, grant applications, contracts, procurement, capital assets, surplus property, and NCTC files.

II. ACCOUNTING

NCTC funds are held by Nevada County. NCTC has contracted with the Nevada County Auditor-Controller for their accounting services in order to cut warrants, process journal entries, and receive and record state, federal, and Nevada County Regional Transportation Mitigation Fee (RTMF) funds, and other electronic deposits. NCTC contracts with Sierra Business Services for payroll processing and quarterly reporting.

Financial transactions are recorded in QuickBooks and are reconciled to Nevada County's financial system, Fin+, monthly. Reconciliations are reviewed and signed by the Executive Director or his designee. The Commission reviews and approves the monthly financial reports as well as the year end state mandated fiscal audit.

The Executive Director and Administrative Services Officer (ASO) have full access to QuickBooks and Fin+. The Deputy Executive Director (DED) and Administrative Assistant (AA) have limited access to QuickBooks for cross-training purposes. These financial systems are password protected.

The fiscal year is July 1st through June 30th.

A. Deposits

NCTC records deposits for Local Transportation Funds (LTF), state and federal planning grants, Airport Land Use Commission (ALUC) review fees, and Regional Transportation Mitigation Fees (RTMF). Deposit transactions are reviewed and signed by the Executive Director or his designee.

Cash is received by Electronic Fund Transfer (EFT), by journal entry, and by check.

EFTs are often received from Caltrans and grants, and are deposited directly to Nevada County in the appropriate NCTC sub-account. The Treasurer's office notifies the ASO and provides a copy of the EFT. The ASO records the deposit in QuickBooks and in Fin+. The deposit information is then emailed to the Treasurer to match with the county bank account and interface with Fin+.

County distributions of RTMF and LTF are recorded by journal entry by the Auditor-Controller. The Auditor-Controller emails remittance documentation to the ASO, who records the deposit in QuickBooks.

Sources of checks received through the mail are usually RTMF revenues collected by Grass Valley and Nevada City and ALUC review fees. These checks are logged into the Incoming Mail Log and endorsement stamped by the Administrative Assistant (AA). A copy of the check is provided to the Executive Director. The check is given to the ASO, who fills out the deposit slip and records the deposit in QuickBooks and Fin+. The AA makes the deposit at Tri Counties Bank, where Nevada County's funds are held. A copy of the deposit receipt, along with the Fin+ deposit batch number, are emailed to the county Treasurer, who makes sure that the transaction is interfaced with the Fin+ system. The ASO prints a copy of the receipt for confirmation. The deposit documentation is matched up with the Executive Director's check copy. Deposits are usually made within one day of receipt. Documentation is scanned and hard copies are in the ASO's office.

B. Payments

Vendor master file maintenance is done at the county level. NCTC may have a new vendor entered into the vendor master file by submitting a vendor request to the county. The county reviews the request, checking all vendor documentation, and assigns a vendor number for reimbursement purposes. Vendor requests are filled out by the ASO and signed by the vendor. NCTC personnel only have view access to the vendor master file. All payment transactions are reviewed and signed by the Executive Director or his designee.

Invoices received by mail are date stamped and entered in the Incoming Mail Log by the AA, then routed to the ASO to process for payment. Emailed invoices are date stamped when printed. When this is not available, a copy of the email is printed along with the invoice.

The ASO reviews the invoices for completeness and gets signature approval from the Project Manager for contract invoices. The Project Manager will include the Contract Identifier on each invoice. Payment of invoices is recorded in QuickBooks and a Batch Payable Edit List is created in Fin+. The accounts payable packet, including invoices, QuickBooks report, and Fin+ Batch Payable is reviewed and the Fin+ Batch Payable is signed by the Executive Director or his designee. The Auditor-Controller maintains a list of approval signatures and will not process a batch without proper signature.

The ASO emails the Batch Payable to the Nevada County Auditor-Controller's office to request payment. The Auditor-Controller's office will process the payment, issuing an EFT or a warrant per the vendor's preference. The AA is notified when processing is complete. The AA picks up the warrants and Fin+ check register, signing for them at the Auditor-Controller's office. The AA logs the warrants in the Outgoing Mail Log and mails them. The check register and invoices are given to the ASO, who enters the EFT or warrant numbers into QuickBooks.

Invoices from Nevada County, per subrecipient agreement, are processed the same as above, except funds are transferred by journal entry instead of a Batch Payable.

Expenses are tracked by fund class, account, work element, direct or indirect, and allowable or unallowable.

Documentation is scanned and hard copies are kept in the ASO's office.

C. Payroll

Time sheets are kept by all employees. Employees sign and submit time sheets to the Executive Director biweekly. The Executive Director reviews the time sheets for accuracy and proper allocation of time to Work Elements in the OWP and distribution of regular, sick, and vacation time, and gives signature approval. The ASO approves the Executive Director's timesheet.

If a correction needs to be made to a time sheet after it has been processed, a manual "Corrected Time Sheet" is submitted. This updated time sheet will have all necessary corrections written in red ink, will include the date and time of the submission, and have "Corrected Time Sheet" noted at the top. Notes regarding the corrections will be included in the comments section of the time sheet. The employee and supervisor will both sign and date the corrected time sheet before submitting it to payroll in the next payroll cycle.

The Executive Director emails the distribution of hours (regular, sick, vacation) for each employee to Sierra Business Services. Sierra Business Services processes the payroll and emails reports to the Executive Director and ASO. The ASO reviews the reports for accuracy, then enters payroll information in QuickBooks, and in Fin+ as a Batch Payable. A journal entry is done in QuickBooks to reconcile Net Payroll each pay period. This impacts QuickBooks only, not Fin+.

The payroll packet, including paystubs, QuickBooks reports, Fin+ Batch Payable, and QuickBooks journal entry, is reviewed and approved with signature by the Executive Director. The ASO emails the Batch Payable to the Nevada County Auditor-Controller's office to request payment. The Auditor-Controller's office will process the payment, issuing an EFT or a warrant. The AA is notified when processing is complete. The AA picks up the warrants and Fin+ Check Register, signing for them at the Auditor-Controller's office. The Check register is given to the ASO, who enters the EFT or warrant numbers into QuickBooks.

The Executive Director uses time sheet information to create his Cost Allocation Spreadsheet, which is used in billing Caltrans for Rural Planning Assistance (RPA) funding. Sierra Business Services files State and Federal Payroll reports and provides them to NCTC.

All employees receive their paychecks as EFTs from the County. If manual paychecks are needed in an unusual circumstance, employees are asked to sign the Fin+ check register to show receipt of their paycheck.

D. Journal Entries

Journal entries are prepared by the ASO and entered into QuickBooks and Fin+. The journal entry and documentation is reviewed by the Executive Director, who gives signature approval. The journal batch is emailed to the Auditor-Controller. The ASO later prints the confirmation that the journal entry has been processed in Fin+. Journal entries not processed will show as unreconciled in the monthly reconciliation between Fin+ and QuickBooks. Documentation is scanned and hard copies are kept in the ASO's office.

III. BUDGET

The Executive Director is responsible for development of NCTC's annual yearly budget known as the Overall Work Program (OWP). The OWP serves as an annual program management document that identifies all regional transportation planning activities and funding sources to accomplish the identified activities. The primary purpose of the annual work program is to establish proper use of various federal and state funds on transportation programs and projects consistent with the NCTC's priorities. The detailed budget information includes work elements, estimated costs, indirect costs, funding sources, and completion schedules. The NCTC approves the OWP and amendments, and authorizes the Executive Director to apply for grants, sign certifications and assurances, and execute agreements to facilitate receipt of revenues and expenditures of funds as set forth in the OWP.

A. Administrative Budget

The Public Utilities Code (PUC) Section 99233.1 provides that the NCTC, as the regional transportation planning agency, is allocated funds to administer the Transportation Development Act (TDA). Section 6617 of the California Code of Regulations states: "The term 'administer' does not include the performance of activities included for the transportation planning process." NCTC is allocated funds to perform those procedural and administrative responsibilities assigned to the NCTC. The NCTC therefore adopts an annual Administrative Budget to account for expenditures such as audits, legal and accounting services, duplicating, and office expenses. No transfers, variations, changes or modifications are made in connection with monies budgeted for administrative costs without the approval of the NCTC.

B. Transportation Planning Budget

PUC Section 99233.2 provides that NCTC may approve up to 3% of the annual Local Transportation Fund (LTF) revenues for transportation planning and programming. Funding is also derived from state planning grants, FTA grants, and from other federal programs.

Allowable expenses include, but are not limited to, short and long range multi-modal transportation planning, transportation improvement programming, transportation monitoring, bicycle planning and education, specialized transportation planning, transportation systems management, development plan coordination, and public information via NCTC's website. The NCTC may, at its discretion, contract with other entities to accomplish portions of its adopted work program.

It is expected that as each fiscal year progresses, situations and priorities will change, and work activities and budgets must be updated correspondingly. For that reason, amendments to the OWP and planning budget are normally expected during the fiscal year.

C. MOU with Member Jurisdictions

In 1994 a Memorandum of Understanding was signed by NCTC, Nevada County, Grass Valley, Nevada City, and Truckee, whereby all parties had desired to cooperate and coordinate with each other for the purpose of regional transportation planning, and to have a forum to discuss and consider the problems, which were of common concern to their local governments. In the MOU it was agreed upon that the proposed overall work program, prior to being adopted by the NCTC, be submitted to each member jurisdiction for review and comment, and each would acknowledge its approval of projects contained in the proposed annual work program by adopting a resolution.

D. Master Fund Transfer Agreement with Caltrans

The NCTC has executed a Master Fund Transfer Agreement (MFTA) with the state (Caltrans) effective January 1, 2015 and terminating December 31, 2024. The state, per this agreement, agrees to notify the NCTC of the anticipated level of state and federal planning funding that may be available to the NCTC. The state prepared the MFTA, which together with the annual OWP, and Overall Work Program Agreement (OWPA), sets forth the entire terms and conditions under which these funds are to be expended by the NCTC for the fiscal year of the OWP and annual OWPA. In turn, NCTC agrees to develop and submit the draft OWP by each March 1st for approval by the state. Disbursements of funds by the state will occur after their approval and execution of the annual OWPA. The NCTC agrees to satisfactorily complete all work element tasks, projects, and products as described in each approved annual OWP financed with state or federal funds and encumbered by the state via the annual OWPA.

The Executive Director incorporates Caltrans comments and submits the final OWP to the NCTC for adoption at its May meeting. The adopted work elements, with budgeted amounts, are then entered into QuickBooks by the ASO, which in turn enables the Executive Director to provide the NCTC a monthly financial report of its allocation of funds and monthly expenditures for their review and approval.

IV. GRANT APPLICATION PROCEDURES

When Caltrans sends notices informing NCTC of available grant funds with established guidelines, the Executive Director and Transportation Planner evaluate the grant application concept and contact the member agency that will be the recipient of the finished project. Under the direction of the Executive Director, the Transportation Planner prepares the grant application, develops a task schedule and budget, required administrative data, and transmittal letter. The Executive Director reviews the completed grant application and signs it, and then forwards it to the funding agency. When the NCTC receives grants and related grant agreements to perform work, the Executive Director creates a work element for the specific project in the OWP and submits it to the NCTC for approval. The Executive Director will designate a project manager to be responsible for complying with grant conditions and managing project activities.

V. CONTRACTS

A. Professional Services Contracts

Professional service contracts provide for work to be performed by other than NCTC staff, such as attorneys, engineers, or other consultants possessing a high degree of technical skill. The Executive Director may award contracts for professional services identified in the current OWP that cost less than \$5,000, through direct negotiation without conducting a Request for Proposal (RFP). Professional service contracts over \$5,000, but less than \$10,000, which are identified in the current OWP, may be awarded and signed by the Executive Director after going through the RFP process. Professional service contracts that exceed \$10,000, or any contract that is not identified in the current OWP, must be presented to the NCTC for consideration and approval.

RFPs provide to potential consultants an outline of the work or services that are being requested, and contain information specifying the format of the proposal in order to facilitate the equitable comparison of those proposals. RFPs may be posted on the NCTC website and/or distributed via email or mail. The purpose of the RFP process is to establish an open, fair, and competitive

selection of qualified professional consultants. RFPs contain the criteria that will be used to select a consultant for the project. RFPs will be distributed to consultants listed in an established NCTC file or those who appear to be qualified for a specific project. The Executive Director is responsible for taking all reasonable steps to ensure that Disadvantaged Business Enterprises (DBEs) are afforded a maximum opportunity to participate in the proposal process. A DBE consultant list is maintained by the ASO. If state and/or federal funds are used for a project, the ASO and project manager are responsible for following correct DBE procedures throughout the project.

After proposals are received, NCTC staff organizes a panel of technically competent persons to review the proposals. Each proposal is evaluated for its responsiveness to the RFP and the established evaluation criteria. Based on recommendations from the review panel and direction from the Executive Director, a draft contract is drawn by the ASO and sent to NCTC's legal counsel for review and signature. A contract that exceeds \$10,000, or is not identified in the current OWP, will be presented to the NCTC for review and approval. Successful proposals, statements of qualifications, and evaluation materials for RFPs will be retained through project completion plus an additional five years. Unsuccessful proposals and statements of qualifications will be retained for two years.

B. Work Orders

The Executive Director may use a work order to establish specific tasks to be performed by a consultant.

1. Any task requiring more than an estimated eight hours of work or charges in excess of \$1,000 will be authorized through a written work order. The work order will describe the work to be performed, any deliverable products, scheduled completion, and the fees to be paid.
2. Tasks requiring less than eight hours of a consultant's time or charges less than \$1,000 will be completed under written or verbal authorization of the Executive Director.
3. For projects in excess of \$5,000, the NCTC's procedures for Professional Services Contracts will be followed.

C. Subrecipient Agreements

NCTC receives Rural Planning Assistance (RPA) funds through the California Department of Transportation (Caltrans). These funds are administered through the Master Fund Transfer Agreement (MFTA) between Caltrans and NCTC. RPA funds are a primary source of funding for NCTC's annual Overall Work Program (OWP) that is approved by Caltrans.

NCTC and its Subrecipients have access to the regional planning handbook developed by the Caltrans Headquarters Office of Regional and Interagency Planning (ORIP) as a resource to describe the interactions between Caltrans District 3 staff, ORIP staff, Regional Transportation Planning Agencies (RTPAs) on the OWP and the Regional Transportation Plan (RTP).

1. Intent

The intent of this policy is to document NCTC's procedures to ensure that RPA funds awarded are consistent with State and NCTC priorities, and that payments made to Subrecipients are for costs associated with activities and/or products identified in the OWP and that such costs are allowable and eligible for reimbursement. This manual also provides

procedures that NCTC will follow to exercise oversight of the Subrecipients and the procedures that Subrecipients will follow to ensure compliance with State laws and regulations.

The procedures in this policy apply to NCTC and its Subrecipients seeking to receive funds from NCTC. All Subrecipients of Federal and/or State grant funds through NCTC are subject to the same Federal and State requirements as NCTC.

Subrecipients are local entities that expend State funds received from a pass-through entity to carry out a State program. A Subrecipient may also be a recipient of state funds directly from a state agency. Whether a Subrecipient receives awards from a state agency or a pass-through entity, the Subrecipient is subject to the same state regulations as the pass-through entity.

NCTC is considered a “pass-through entity” in relation to its Subrecipients, and as such requires that its consultants and Subrecipients comply with the applicable terms and conditions (flow down provisions) of the MFTA and fund requirements.

NCTC’s Subrecipients include, but are not limited to, the cities of Grass Valley and Nevada City, the Town of Truckee, and the County of Nevada. See the NCTC Subrecipient Agreement, Attachment A.

2. NCTC Subrecipient Monitoring and Management

The development of NCTC’S OWP and corresponding Subrecipient Agreements include sufficient detail to provide clear understanding of activities, tasks, deliverables, cost, and schedule for work to be done by Subrecipients.

Each Subrecipient invoice is reviewed by NCTC staff to ensure that the work performed and the costs billed are in compliance with the Subrecipient Agreement and applicable state regulations. To facilitate this review, subrecipients are required to submit sufficient invoice detail. Review and approvals will be documented by the Executive Director’s signature. The Administrative Services Officer will initial the invoices to document the availability of funds.

Payments will be withheld from Subrecipients for the following reasons:

- a) Insufficient detail to support the cost billed;
- b) Unallowable costs;
- c) Ineligible costs; and/or
- d) Incomplete work or work not completed in accordance with the Subrecipient Agreement.

Invoices will be date stamped upon receipt if received in hard copy. A record of the date of receipt will be maintained for those invoices sent electronically.

NCTC will provide updates for Subrecipient staff to ensure currency and continued compliance with this policy.

Subrecipients have the responsibility to submit accurate and complete invoices. These invoices will show the costs incurred, in detail. If there are staff costs they will show the name(s) of the staff, their hourly pay rates, fringe benefit rates and costs, and overhead rate, if applicable. The invoices will also show the billing period, project OWP number and title, year-to-date budget and costs, and the remaining budget for each project.

The Local Assistance Procedures Manual and MFTA set out the requirements for NCTC to obtain reimbursement for expenditures on State-funded projects. NCTC is required to submit invoices to Caltrans for completed work. Invoices may be submitted monthly to Caltrans. Chapter 5 of the Local Assistance Procedures Manual describes the invoice process requirements, which apply to Subrecipients as well as NCTC.

VI. PURCHASING POLICIES AND PROCEDURES

A. General Provisions

1. Introduction and Purpose

These Purchasing Policies and Procedures (“Procedures”) are established for use by the Nevada County Transportation Commission (NCTC), a Regional Transportation Planning Agency, for the award of NCTC Contracts.

NCTC is responsible for its own product and services acquisitions. This process includes ensuring the necessity of procuring the product or service, ensuring appropriate funding is available, complying with laws, and writing contracts in a manner that safeguards the program’s and the organization’s interest. These Procedures are designed to ensure the best and most cost-effective use of program funds through an open and fair procurement process.

NCTC management must maintain a written record of all persons authorized to sign contracts, including copies of all resolutions or letters delegating such authority to NCTC personnel.

These Procedures are for the use of NCTC’s Commission and staff and will not be construed to create or recognize any procedural or other right in any person or entity, including, but not limited to, any bidder, prospective bidder, or party to a Contract with NCTC. The Commission may adopt standard specifications setting forth procedures and controls for Contracts and the bidding and award thereof, to modify or supplement these Procedures. The Commission may amend these Procedures from time to time.

2. Policy

It is the policy of NCTC that goods and services be acquired through a procurement process that provides full and open competition to the maximum extent feasible, consistent with federal and state statutes and regulations and that such procurements will be consolidated, whenever possible, to ensure efficient use of NCTC staff resources. NCTC will only contract with responsible contractors possessing the ability to perform successfully.

No Commission member, officer, employee or agent of NCTC will, on the grounds of race, color, creed, national origin, sex, age, or sexual orientation, discriminate or permit discrimination against any person or group of persons in connection with the procurement of goods and services.

It is the policy of NCTC that NCTC and its contractors will take all reasonable steps to ensure that disadvantaged business enterprises (DBEs) have the maximum opportunity to compete for NCTC contracting opportunities.

3. Responsibilities

NCTC's Executive Director is responsible for administration of this policy, and for ensuring funds are available. The Executive Director may delegate responsibility for implementation to staff members of NCTC. Under the authority of the Executive Director, NCTC will develop and maintain standard purchasing forms, purchase orders, and other forms as necessary to implement this policy and the procedures identified.

The NCTC Executive Director is responsible for becoming familiar with this policy and for adhering to and carrying out this policy, for ensuring that these procedures are followed, for approving or recommending approval of the procurement of goods and services necessary to accomplish the goals of NCTC, and for reviewing the proposed procurements to avoid the purchase of unnecessary or duplicative items. The NCTC Executive Director may delegate these responsibilities to the Project Manager initiating the procurement.

4. Definitions

- a) "A&E Contract" means a contract for architectural or engineering services, which includes program management, construction management, feasibility studies, preliminary engineering, design, architectural, landscape architecture, environmental services (including environmental documentation), engineering, surveying, mapping, and related services. Such services must be directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property.
- b) "Commission" means NCTC's Commission.
- c) "Contract" means a Special Services Contract, Supply Contract and any other agreement, whether written, oral or otherwise, that evidences a legal obligation, including, but not limited to, any contract, lease, purchase order, change order, or similar thing, and any amendment thereto.
- d) "Emergency" means a sudden, unexpected occurrence that poses a clear and imminent danger, requiring immediate action to prevent or mitigate the loss and impairment of life, health, property, or essential public services.
- e) "Executive Director" means the Executive Director of NCTC, or another individual given written authorization by the Commission or the Executive Director, to enter into a transaction on behalf of NCTC.
- f) "Invitation for Bid" or "IFB" means a solicitation for sealed bids which will be awarded to the responsible, responsive bidder whose bid is lowest in price and conforms to all the material terms and conditions in the IFB.
- g) "Non-Federal Contracts" means a Contract that will be funded with State and/or local funds only. No federal funds will be utilized to pay the selected vendor or contractor.
- h) "Maintenance" means ongoing maintenance and other services, including, but not limited to, real property maintenance, janitorial services, elevator maintenance and repair, equipment maintenance and repair, landscaping and other such services.
- i) "Project Manager" means the NCTC staff member assigned administrative responsibility for a Contract or procurement.
- j) "Purchase" means the purchase, rental, or leasing of supplies, goods, equipment, materials, and other personal property.
- k) "Request for Proposal" or "RFP" means a solicitation for competitive proposals, used to

acquire services, supplies, or property. “Request for Proposal” (“RFP”), as used in these Procedures, also includes a “Request for Qualifications” (“RFQ”).

- l) “Special Services Contract” means a contract for special services which cannot readily be provided by NCTC's employees. “Special Services” may include, but are not limited to, financial, economic, accounting, legal, human resources, administrative, security, maintenance, operational, advertising, and related services and any other services of a similar nature.
- m) “Supplies” means supplies, goods, equipment, materials, and other personal property, excluding such items used in or incorporated into a specified individual project of construction, alteration, renovation, improvement, demolition, or repair work involving a public facility.
- n) “Supply Contract” means any Contract for the Purchase of Supplies.

5. Contract Identifiers

Each consultant contract will be assigned a unique identifier by the Project Manager. The identifier will contain nine digits following the letters WE (Work Element). The nine digits will be assigned as follows: the first three digits represent the OWP Work Element number, the remaining six digits will represent the two-digit month, two-digit day, and two-digit year that the contract was approved.

For example, the Contract Identifier for Work Element 2.1 Regional Transportation Plan, approved on January 1, 2018, would be WE 210010118.

6. Basic Contracting Process

The contracting process starts with the recognition of a need for a product or service. From that point the process varies depending on the type of product or services needed. Key considerations include:

- a) Time – When the product or service is needed is a critical factor.
- b) Cost and Funding – Funding and payment for services rendered is important. NCTC should have funding available within its budget for the fiscal year in which the required services will be performed. If a multi-year contract, the necessary contingencies should be incorporated into the terms of the contract. Prior to commencing any procurement or amending an existing contract that is over \$2,500 and utilizes federal funds, the Project Manager must complete a Cost or Price Analysis form, see Attachment B.
- c) Competitive Bidding – Selection of a contractor must be the result of an open and fair process in which all qualified providers of the product or service desired have the opportunity, and the information necessary, to submit a bid or proposal.
- d) Management of the Contract – The final step of managing the contract should be anticipated and planned during the contracting process. Deliverables should be clearly described so they can be evaluated and payments can be approved.

For each contract utilizing federal funds and in excess of \$2,500, the contract file must contain a completed History of the Procurement form, see Attachment C. This form must be completed by the Project Manager as applicable for each project.

7. Environmental and Energy Efficiency Preference

To the extent practicable and economically feasible, federally funded procurements will reflect NCTC's preference for products and services that conserve natural resources, protect the environment, and are energy efficient.

B. Procurement of Office Supplies and Equipment

Items costing less than \$1,000 require a Purchase Order signed by the Executive Director prior to purchase. Any one item costing more than \$1,000, but less than \$10,000, that is identified in the current OWP, are approved and purchased by the Executive Director.

Purchase of any one item costing more than \$2,500 not listed individually in the OWP, or that exceeds \$10,000, must be presented to the NCTC for consideration and approval by resolution.

It is the responsibility of the Executive Director to ensure that all purchases are made at the most favorable price for the NCTC consistent with efficient operation. Purchase of equipment or supplies that cost more than \$1,000 are made after obtaining at least two competitive quotes for like or similar items, unless sole source procurement is justified.

A sole source procurement is justified when: 1) only one firm or vendor can provide the product; 2) time would prevent a competitive bidding process such that postponement for bidding would result in health, safety, or other essential need not being met; or 3) the requested service is an extension of an existing contract.

1. Purchase Order Policy

Purchase Orders are a form of legal contract between a vendor who promises to deliver certain goods or services, and NCTC who agrees to pay for those goods or services. NCTC staff is authorized to use the procedure below to secure supplies or services up to \$2,500. Purchase Orders are not valid unless authorized and executed as outlined below.

- a) Staff will fill out a Purchase Order sheet, including quantity, product number (if available), description of product, purchase amount, and total of order including tax and shipping if applicable. Indicate if funds are to be taken from petty cash, NCTC credit card, or on account with the vendor.
- b) Record the date of request and Purchase Order number in sequence.
- c) Indicate the purpose or use, and fill in the requestor's name and staff position.
- d) The Executive Director must review the request and sign approval, verifying the appropriate procurement procedures have been followed and sufficient funds are available in the budget. If the Executive Director is unavailable for review and approval, a designated staff member is authorized to sign in his absence.
- e) Following delivery or acquisition of the items purchased, the Purchase Order sheet will be date stamped and initialed by the Executive Director as received.
- f) Provide a copy of the Purchase Order and the original receipt(s) to the Administrative Services Officer, and file the Purchase Order and a copy of the receipt and any other descriptive material regarding the purchase in the Purchase Orders folder.

2. Payments on Purchase Orders

- a) All invoices submitted for payment will reference the associated Purchase Order number.
- b) At the time of final payment, a copy of the Purchase Order will be attached to the final invoice with documentation noting that the Purchase Order is complete.

3. Credit Card Policy

It is the policy of NCTC to allow the use of a credit card for certain expenses, as outlined below. The Executive Director or his designee is responsible for authorizing specific employees to use the credit card. Personal use of NCTC issued credit cards is prohibited.

Approved uses for NCTC credit cards:

- a) Purchasing supplies and/or materials
- b) Reserving rooms for conferences and meetings
- c) Lodging and meal expenses incurred during authorized travel
- d) Renting vehicles or purchasing tickets on domestic carriers for authorized travel
- e) Purchasing gasoline for NCTC vehicles or rental vehicles used for authorized travel
- f) Purchasing meals during NCTC business, such as Commission meetings

The NCTC credit card may not be used for:

- a) Personal purchases
- b) Gasoline for personal vehicles not used for NCTC business
- c) Alcoholic beverages
- d) Any purchase that violates NCTC's Contract and Purchasing Policies and Procedures

The Executive Director or his designee will maintain a list of all NCTC credit cards, the employees to whom a card was issued, the credit limit established, the date issued, and the date returned. Upon receipt of the credit card, the employee will initial this list to acknowledge receipt and agreement that the card will be used only for authorized expenditures.

Following the use of the NCTC credit card, employees will submit a copy of the vendor's receipt to the ASO. If no receipt was obtained, the employee will document the transaction with a signed voucher including the vendor from which goods or services were purchased, the date, amount, and purpose of the purchase. The balance on the card, including any interest due, will be paid within 60 days of the initial statement date.

Upon review of the credit card statement, any undocumented transactions appearing on the statement will be investigated by the Executive Director or his designee. The employee to whom the card was issued is responsible to resolve any erroneous charges, returns, or adjustments to ensure proper credit is given on subsequent statements. Employees who knowingly use the NCTC credit card in a manner contrary to this policy will be subject to disciplinary action and reimbursement of unauthorized expenditures, as deemed appropriate by the Executive Director.

4. Standing Purchase Orders

Standing Purchase Orders are issued for vendors whom NCTC uses regularly, but the dollar amounts are relatively low for each purchase. The Purchase Order will identify the length of time for which it is valid, and the maximum dollar value. Should circumstances change during the fiscal year and additional funds be required under a standing Purchase Order, a Purchase Order amendment will be processed.

5. Exceptions to Requirements for Purchase Order

- a) Utilities including telephone, electricity, rent, water service, cable service, Internet service
- b) Insurance claims and premiums
- c) Payroll liability and benefit payments and service provider fees
- d) Membership dues
- e) Contributions to co-sponsor or participate in conferences, workshops or similar activities
- f) Petty cash replenishment
- g) Subscriptions
- h) Travel expenses, reimbursements and advances (subject to NCTC's Business Travel and Mileage policy)
- i) Postage, courier, delivery and messenger service
- j) Purchases under \$100
- k) Credit card payment
- l) Copying charges
- m) Attorney services (subject to approved Contract)
- n) Trade circulars or books
- o) Fuel
- p) Payment to other governmental entities
- q) Education and/or seminar registrations (subject to NCTC's Meeting and Conference Expenses policy)
- r) Employee equipment loans

6. Record Keeping

NCTC will maintain purchasing and financial records, covering procurement transactions as well as other aspects of project implementation, for three years after final payment has been made and all other pending matters are closed. No purchase will be made without an authorized Purchase Order, pursuant to NCTC's Purchase Order Policy.

7. Federal Contract Requirements

Federally funded contracts will require compliance with Federal law and will include the following contract clauses and requirements: "Responsibility" Requirements; Debarment and Suspension; Conflict of Interest; Lobbying Certification and Disclosure; Federal Civil

Rights Laws and Regulations; Labor and Prevailing Wage Laws and Regulations; and Disadvantaged Business Enterprise Requirements.

8. Code of Conduct

a) Award and Administration of Contracts: No Commissioner, employee, or agent of NCTC will participate in the selection, award or administration of a contract (including Purchase Orders) if a conflict of interest, real or apparent, would be involved. Such a conflict would arise if any prospective vendor or contractor (or any subcontractor) considered for an award is:

- (1) The NCTC Executive Director, employee, officer or agent
- (2) Any member of his/her immediate family
- (3) His/her domestic or business partner
- (4) An organization that employs any of the above, or with which any of them has an arrangement concerning prospective employment

No Commissioner, employee, or agent of NCTC who participates in the procurement, management, or administration of contracts will have, directly or indirectly, a financial or other personal interest in any contract made or influenced by them in their official capacity.

No Commissioner, employee, or agent of NCTC will solicit or accept gratuities, favors, or anything of monetary value from consultants, vendors, contractors, or potential consultants, or parties to sub-agreements in excess of the applicable gift limit established by the Fair Political Practices Commission (“FPPC”). Gifts will be reported consistent with FPPC requirements.

No person or entity performing services on behalf of NCTC will have, directly or indirectly, any financial or other personal interest, other than employment or retention by NCTC, in any contract or subcontract.

Violations of these standards may result in sanctions, or other forms of discipline up to and including termination.

b) Disciplinary Action: The purpose of this policy is to provide guidelines consistent with the NCTC Personnel Manual that will ensure uniform application of progressive discipline for employees, officers or agents of NCTC subject to disciplinary action. See NCTC Personnel Manual Article 9.3 Procedures for the listing of disciplinary actions.

NCTC employees, officers, and agents who are not subject to disciplinary action “for cause” are covered by written “at-will” employment agreements or other contracts which allow for termination by NCTC for no reason or for any reason, including but not limited to violations of the standards set forth in this section. This policy is in addition to any discipline statutorily available for those participating in the selection, award or administration of a contract if a conflict of interest exists. (Cal. Gov. Code, §§ 81000-91014.)

9. References

All applicable federal and state laws and regulations are incorporated by reference in these Procedures to the extent required by law, including but not limited to: 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; Office of Management and Budget Circular *A-102, Grants and Cooperative Agreements with State and Local Governments*; 49 CFR, Part 18, *Uniform Administrative Requirements for Grants and Cooperative Agreements with State and Local Governments*; Chapter 11 of 40 U.S.C., *Brooks Act*; and FTA Circular 4220.1F, *Third Party Contracting Guidance*, and any amendments thereto.

C. Awarding of Contracts

Once a vendor has been identified pursuant to the appropriate method of procurement, as set forth below, a contract must be negotiated. Sample contracts and sample requests for proposals for projects funded with both Federal and Non-federal funds are available to NCTC staff in computer drive Network/SERVER/Shared/ADMINISTRATIVE OPERATING PROCEDURES. No work will commence nor goods ordered until a contract has been negotiated and approved, as set forth below. A Purchase Order must also be approved for every procurement, according to NCTC’s Purchase Order Policy.

Price Threshold	Method of Procurement	Required Approval Level
Under \$2,500	Purchase Order, No Bidding Required	NCTC Executive Director
\$2,500 - \$ 10,000	RFP – for Supplies/Special Services	NCTC Executive Director
More than \$10,000	RFP – for Supplies/Special Services	NCTC Commission

1. Supplies, Special Services, and Services Contracts

Contracts which involve both Special Services and Supplies will be deemed Special Services Contracts; except that such contracts for which Supplies account for more than 80% of the contract price will be deemed Supply Contracts.

- a) Expenditures Under \$2,500: NCTC Executive Director and Deputy Executive Director are authorized to purchase single items costing less than \$2,500, and all Supply Contracts and Special Services Contracts when the expenditure is less than \$2,500, as set forth in NCTC’s Purchase Order Policy.
- b) Expenditures between \$2,500 and \$10,000: Purchases of any one item costing more than \$2,500, but less than \$10,000, that is identified in the current Overall Work Program (OWP), may be approved by the Executive Director or Deputy Executive Director.
- c) Expenditures over \$10,000: Purchases of any one item costing more than \$10,000 must be presented to the Commission for consideration and approval by resolution.

2. Methods of Procurement

All solicitations will include a clear and accurate description of NCTC’s technical requirements for the property or services to be acquired. NCTC will utilize the following guidelines when procuring services, supplies, and property at the specified dollar amounts:

a) Procurement by Small Purchasing Procedures

Small purchasing procedures may be used to acquire services, supplies, or other property totaling \$10,000 or less. If a potential contract amendment may cause the total contract amount to exceed \$10,000, procurement should be made by competitive proposal, as set forth below.

- (1) A list of criteria for the materials or services to be provided must be developed.
- (2) For purchases over \$2,500, verbal or written price or rate quotations must be obtained from at least three possible sources. A hard copy of a published or listed price is considered a written quotation. If verbal quotations are received, staff should complete the Documentation of Quotations Acquired by Telephone form, see Attachment D. Verbal quotations can be difficult to enforce, so a successful verbal quotation should be confirmed in writing by the offeror. When an award is made to other than the source with the lowest quotation, a written justification of the award decision will be made a part of the quotation record.

b) Procurement by Competitive Proposal: Request for Proposals / Request for Qualifications (RFP/RFQ)

Procurement by competitive proposal/request for proposals/request for qualifications (“RFP”) will be utilized to acquire services, supplies or property totaling more than \$10,000. RFPs for procurements that exceed \$10,000 will be approved by the Commission, unless the scope of work is included in NCTC’s Overall Work Program and adopted budget. However, any RFP may be taken to the Commission if it is determined by management that there are issues surrounding the project that are of interest to the Commission. Sample RFP formats to assist in processing an RFP are available to NCTC staff in computer drive Network/SERVER/Shared/ADMINISTRATIVE OPERATING PROCEDURES.

Either a fixed price or a time and materials contract with a “not to exceed” contract amount will be awarded. The RFP method of procurement will generally be used when conditions are not appropriate for the use of sealed bids. If this procurement method is used, the following requirements will apply:

- (1) RFPs will be publicized, as set forth below;
- (2) All evaluation factors will be identified, along with their relative importance;
- (3) Proposals will be solicited from an adequate number of qualified sources;
- (4) When conducting technical evaluations of the proposals received, staff will use the Guidelines for Criteria and Considerations in Evaluating RFPs, see Attachment E;
- (5) NCTC will interview up to five proposers, based on scoring of the submitted proposals. The Executive Director or Deputy Executive Director, in consultation with the proposal review panel, will determine the exact number of proposers to interview, based on scoring of proposals;
- (6) The contract will be awarded to the responsible firm whose proposal is most advantageous to NCTC's program when price and other factors are considered. NCTC normally will select the lowest bidder meeting the minimum qualifications,

unless it can be demonstrated that accepting a higher cost proposal will provide a substantially better product or service that would justify the higher cost; and

- (7) In determining which proposal is most advantageous, NCTC may award the contract to the proposer whose proposal offers the best value. However, if NCTC uses the best value selection method as the basis for award, the solicitation must contain language establishing that an award will be made on a “best value” basis.

3. Procurement by Sealed Bids/Invitation For Bid (IFB)

If sealed bids/invitation for bids (“IFB”) are utilized, bids will be publicly solicited and a firm fixed-price contract (lump sum or unit price) will be awarded to the responsible bidder whose bid, conforming to all the material terms and conditions of the invitation for bids, is the lowest in price. IFBs for services or supplies that are anticipated to exceed \$10,000 will be approved by the Commission prior to solicitation, unless the scope of work is included in NCTC’s approved Overall Work Program and adopted budget.

a) IFB may be utilized when the following conditions are present:

- (1) A complete, adequate, and realistic specification or purchase description is available;
- (2) Two or more responsible bidders are willing and able to compete effectively for the business;
- (3) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price; and
- (4) No discussion with bidders is needed.

b) If the IFB procurement method is used, the following requirements apply:

- (1) The IFB will be publicly advertised, as set forth below;
- (2) Bids will be solicited from an adequate number of known suppliers, providing them sufficient time to prepare bids prior to the date set for opening the bids;
- (3) The IFB, which will include any specifications and pertinent attachments, will define the items or services sought in order for the bidder to properly respond;
- (4) All bids will be publicly opened at the time and place prescribed in the invitation for bids;
- (5) A firm fixed-price contract award will be made in writing to the lowest responsive and responsible bidder, as set forth below. When specified in bidding documents, factors such as discounts, transportation costs, and life cycle costs will be considered in determining which bid is lowest;
- (6) Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of;
- (7) Any or all bids may be rejected if there is a sound, documented business reason.

4. Architectural and Engineering Services (A&E)

NCTC will use qualifications-based competitive proposal procedures (i.e., Brooks Act) when contracting for Architectural and Engineering (A&E) services. Services subject to this requirement include program management, construction management, feasibility studies,

preliminary engineering, design, architectural, landscape architecture, engineering, land surveying, mapping, environmental services (including environmental documentation), and related services. If services subject to this requirement are not directly in support of, directly connected to, directly related to, or lead to construction, alteration, or repair of real property, then the recipient may not use qualifications-based procurement procedures to select the contractor that will perform those services.

a) Qualifications-Based Competitive Proposal Procedures

- (1) An offeror's qualifications must be evaluated;
- (2) Price will be excluded as an evaluation factor;
- (3) Negotiations will be conducted with only the most qualified offeror;
- (4) NCTC will request that the top-ranked offeror submit a sealed cost proposal. If time is of the essence and it can be justified, sealed cost proposals may be requested from the three highest ranked offerors. The cost proposal for the top-ranked offeror will be opened and used to begin negotiations. Failing agreement on price, negotiations with the next most qualified offeror will be conducted until a contract award can be made to the most qualified offeror whose price is fair and reasonable to the grantee. Each offeror's cost proposal must remain sealed until negotiations commence with that offeror.

b) Limitations

These qualifications-based competitive proposal procedures can only be used for the procurement of the A&E services listed above. This method of procurement cannot be used to obtain other types of services even though a firm that provides A&E services is also a potential source to perform other types of services.

5. Procurement by Noncompetitive Proposals / Sole Source for Federally Funded Contracts

Sole source procurements are accomplished through solicitation of a proposal from only one source, in the event of a public Emergency or compelling urgency, or, if after solicitation of a number of sources, competition is determined inadequate.

Where sole source procurement is used, a Sole Source Approval memorandum is required, see Attachment F, documenting the factual circumstances and the need for sole source procurement under one or more of the following reasons:

a) Sole source procurements may be used when the award of a contract is infeasible under small purchase procedures, sealed bids, or competitive proposals and at least one of the following circumstances applies:

- (1) The item is available only from a single source. The property or services are available only from a single source if one of the conditions described below is present:

- (a) Unique Capability or Availability/Unique or Innovative Concept. The offeror demonstrates a unique or innovative concept or capability not available from another source. Unique or innovative concept means a new, novel, or changed concept, approach, or method that is the product of original thinking, the details

of which are kept confidential or are patented or copyrighted, and is available to NCTC only from one source and has not in the past been available to NCTC from another source.

- (b) Patents or Restricted Data Rights. Patent or data rights restrictions preclude competition.

The following conditions may also justify sole source contracting, except when the contract in question is funded, in part or in total, using federal funds from the Federal Highway Administration (FHWA) or state funds such as State Transportation Improvement Program (STIP) funds:

- (c) Substantial Duplication Costs. In the case of a follow-on contract for the continued development or production of highly specialized equipment or services, when it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition.
- (d) Unacceptable Delay. In the case of a follow-on contract for the continued development or production of highly specialized equipment or services, when it is likely that award to another contractor would result in unacceptable delays in fulfilling NCTC's needs.

- (2) A public Emergency exists and will not permit a delay resulting from competitive solicitation;
- (3) A compelling urgency exists such that NCTC's work progress would be inhibited or jeopardized if the competitive bidding process were observed;
- (4) After solicitation of a number of sources, a single bid or proposal is received, despite adequate competition; or
- (5) The Federal awarding agency authorizes noncompetitive solicitation.

- b) Upon receiving a single bid or proposal in response to a solicitation, NCTC will investigate and determine whether competition was adequate. This determination may include: (i) a review of the specifications to verify whether they were unduly restrictive; or (ii) contacting sources that chose not to submit a bid or solicitation.
- c) It is only if NCTC determines that competition was inadequate that the procurement should proceed as a sole source procurement. The mere fact that only one bid or proposal was received does not automatically mean competition was inadequate since many unrelated factors could cause potential sources not to submit a bid or proposal.

6. Exceptions to Bidding Requirements for Locally Funded Contracts

Notwithstanding any other provision of these Procedures, locally funded Contracts may be let without bidding, when permitted by law, under the following circumstances:

- a) When a patented or proprietary item is being Purchased;
- b) To the extent not included in the definition of Special Services Contracts, when the following types of personal property or services are being acquired or Purchased: (a) advertising; (b) books, recordings, motion picture films, subscriptions; (c) property or

- services provided by or through other governmental agencies or obtainable from suppliers which have in force a current Contract with another governmental agency for the same item or service; (d) property or services the price of which is fixed by law; or (e) insurance;
- c) When the Executive Director or his designee, based on advice by legal counsel, determines that entering a Contract without bidding is reasonably necessary for the conduct of NCTC business;
 - d) When the Executive Director or his designee determines that it is advantageous to NCTC to purchase supplies from another public agency or in cooperation with another public agency using that other public agency's bidding procedures;
 - e) When the Executive Director or his designee determines that it is advantageous to NCTC to purchase surplus supplies from the United States Government, or any agency thereof, or from the State of California, or any agency thereof, or any public body without bidding;
 - f) In the event of an Emergency, when the public interest and necessity demands the immediate expenditure of money to safeguard life, health, or property, the Commission hereby delegates to the Executive Director and his designee to act in accordance with the procedures set forth in Public Contract Code section 22050. Any sum required by the Emergency may be expended without complying with the Bidding provisions of these Procedures. The Executive Director and his designee will report such Emergency expenditure at the next meeting of the Commission.

7. Advertising

- a) For Supply Contracts and Special Services Contracts in excess of \$10,000, NCTC will publish notice of a procurement by RFP on the NCTC website, in a newspaper of general circulation, or by delivering notice to a list of potential bidders, as determined by the Executive Director. In its discretion, NCTC may also post such notice as follows: (i) in an appropriate trade journal or other publication; and/or (ii) on the website of one of its partner agencies. The notice will include a description of the supplies or services to be provided, and will state where bid or proposal forms and specifications may be obtained, the time and place bids or proposals are to be submitted, and the time and place for opening bids, if applicable. NCTC will post notice of a procurement on its website for a period of at least two weeks before proposals are due.

D. Additional Bidding Procedures

1. Independent Price Determination

No person, company, firm, or corporation submitting any bid or proposal to NCTC will do any of the following:

- a) Propose or bid prices which have not been arrived at independently, and without consultation, communication, or agreement with any other bidder, offeror, or competitor for the purpose of restricting competition as to any matter relating to the prices bid or proposed;
- b) Knowingly disclose any price, bid, or proposal to any other bidder, offeror, or to any competitor prior to opening the bids or proposals, unless otherwise required by law;

- c) Make any attempt to induce any other person, firm, or other entity or association to submit or not to submit a bid or proposal for the purpose of restricting competition;
- d) Make or be interested in more than one bid under any RFP; provided, however, that nothing herein will limit the right of any person or entity to deal independently with the same subcontractor or supplier as other persons or entities in the preparation of a bid, or to limit the right of any person or entity dealing in any name brand supplies required by NCTC to bid independently of any other person or entity dealing in the same supplies.

In the case of joint venture bids, the joint venture, and each and every member of the joint venture, will for purposes of the foregoing be construed to be the person submitting the bid or proposal.

Any bid received, or Contract awarded, in violation hereof will be a nullity, and the Commission or Executive Director, as applicable, will in such case dispose of the matter in the same manner as if the person or entity involved had failed to enter into the Contract after award thereof, as provided herein.

2. Determination of Responsible Bidder

If any Contract is awarded pursuant to competitive bidding, it must be awarded to the responsible bidder scoring the highest in evaluation of proposals. In determining who is a responsible bidder, the Executive Director or his designee may consider (i) the quality of the Supplies or work to be provided by the bidder; (ii) the ability, capacity, and skill of the bidder to perform the Contract; (iii) the ability of the bidder to perform the Contract within the time specified, without delay; (iv) the character, integrity, reputation, judgment, experience, and efficiency of the bidder; and (v) the quality of the bidder's performance on previous Contracts with NCTC, or any other entity.

3. Irregularities

The Executive Director or his designee reserves the right to reject any and all bids or proposals or to waive informalities or minor irregularities. The Executive Director and his designee reserve the right to make multiple awards and to prohibit "all or none" bids or proposals.

4. Alternative Award Upon Failure of Bidder to Enter Into Contract

If the bidder to whom the Contract is awarded fails to enter into a Contract within the specified time, the Executive Director or his designee may declare the award to that bidder a nullity, and (i) award the Contract to the next lowest responsible bidder, or (ii) reject all bids and (a) re-advertise for bids or (b) negotiate a new Contract.

5. Rejection of All Bids

In the event that the Executive Director or his designee exercises the right to reject any and all bids or proposals, or the bidder to whom the contract is awarded fails to enter into the Contract as required, the Executive Director or his designee may (a) re-advertise for new bids; or (b) enter into direct negotiations with the contractors to achieve the best possible price; or (c) abandon the project. In the event of direct negotiations with contractors to achieve the best possible price, the Executive Director or his designee will consult with NCTC's legal counsel prior to entering a negotiated Contract.

6. Protests

In order for a bid protest to be considered by NCTC, it must be submitted by an interested party (a) that is an actual or prospective proposer, bidder, or offeror in the procurement involved; and (b) whose direct economic interest would be affected by the award of the contract or by failure to award a contract (hereinafter “Protestor”). A protest which is submitted by a party which is not an interested party or which is not in accordance with the procedures will not be considered by NCTC, and will be returned to the submitting party without any further action.

a) A Protestor may file a bid protest on the following grounds:

- (1) Failure to comply with applicable Federal or State Law;
- (2) Alleged misconduct or impropriety by NCTC officials or evaluation team members;
or
- (3) Failure to follow the requirements of the solicitation in question.

b) A bid protest must be filed in writing and must include:

- (1) The name and address of the Protestor;
- (2) The name and number (if available) of the procurement solicitation;
- (3) A detailed statement of the grounds for the protest, including all relevant facts and a citation to the Federal or State law or specific term of the solicitation alleged to have been violated;
- (4) Any relevant supporting documentation the Protestor desires; and
- (5) The desired relief, action, or ruling sought by the Protestor.

c) Protests must be addressed to the Executive Director of NCTC, and received at NCTC’s regular business address.

d) If any of the information required by this section is omitted or incomplete, NCTC will notify the Protestor, in writing, and the Protestor will be given three business days to provide the omitted or incomplete information in order for the protest to be further considered. Note that this provision only applies in the case of a failure to state any grounds for a protest and does not apply to stating inadequate grounds for a protest or the failure to submit documentation.

e) NCTC will consider the following categories of bid protests within the time period set forth in each category:

- (1) Any bid protest alleging improprieties in a solicitation process or in solicitation documents must be filed no later than five calendar days prior to the deadline for submission of proposals. Any protest based on such grounds not filed within this period will not be considered. This category of protests includes, but is not limited to, allegation of restrictive or exclusionary specifications or conditions.
- (2) Any bid protests regarding the evaluation of bids or proposals by NCTC, or improprieties involving the approval or award or proposed approval or award of a contract must be filed with NCTC no later than five business days after NCTC

issues written notice of its decision or intended decision to award a contract. Any protest filed after such date will not be considered.

f) Review of Protest

- (1) NCTC will notify the Protestor within five business days of timely receipt of a bid protest that the protest is being considered.
- (2) In the notification, NCTC will inform the Protestor of any additional information required for evaluation of the protest, and set a time deadline for submittal of such information. If NCTC requests additional information, and it is not submitted by the stated deadline, NCTC may either review the protest based on the information before it, or decline to take further action on the protest.
- (3) In its sole discretion, NCTC may give notice of any bid protest to other bidders or proposers for the procurement involved in the protest, as appropriate, and permit such bidders or offerors to submit comments to NCTC relative to the merits of the bid protest. NCTC will set a time deadline for the submittal of such comments, which will be no less than five business days after NCTC provides notification of the protest.
- (4) In its sole discretion, NCTC may schedule the matter for a meeting. All interested parties will be invited to participate in the meeting.

g) Protest Decisions

- (1) After review of a bid protest, the Executive Director or his designee will recommend a decision to the Commission on the merits of the protest. The recommendation will be made on the basis of the information provided by the Protestor and other parties, the results of any conferences or meetings, and NCTC's own investigation and analysis. The recommendation and information will be provided to the Commission for review and decision.
- (2) If the protest is upheld, NCTC will take appropriate action to correct the procurement process and protect the rights of the Protestor, including re-solicitation, revised evaluation of bids, proposals, or NCTC's determination, or termination of the Contract.
- (3) If the protest is denied, NCTC will lift any suspension imposed and proceed with the procurement process or the Contract.

h) Summary Dismissal of Protests

NCTC reserves the right to summarily dismiss all or any portion of a bid protest that raises legal or factual arguments or allegations that have been considered and adjudicated by NCTC in a previous bid protest by any interested party in the same solicitation or procurement action.

i) Effects of Protest on Procurement Actions

- (1) Upon receipt of a timely protest regarding either the solicitation process or the solicitation documents in the case of sealed bids, NCTC will postpone the opening of bids until resolution of the protest. The filing of the protest will not, however,

change the date on which bids are due, unless NCTC determines, and so notifies all bidders, that such a date change is necessary and appropriate to carry out the goals of the procurement and assure fair treatment for all bidders.

- (2) Upon receipt of a timely protest regarding evaluation of bids or proposals, or the approval or award of a Contract, NCTC will suspend Contract approval or other pending action, or issue a stop work order if appropriate, until the resolution of the protest. In this event, the successful bidder or proposer may not recover costs as a change order.
 - (3) Notwithstanding the pendency of a bid protest, NCTC reserves the right to proceed with any appropriate step or action in the procurement process or in the implementation of the Contract in the following cases:
 - (a) Where the item to be procured is urgently required;
 - (b) Where NCTC determines, in writing, that the protest is vexatious or frivolous;
 - (c) Where delivery or performance will be unduly delayed, or other undue harm to NCTC will occur, by failure to make the award promptly; or
 - (d) Where NCTC determines that proceeding with the procurement is otherwise in the public interest.
- j) A protest adversely affected by a bid protest decision may appeal such decision to an appropriate court of the State of California, if authorized under Federal or State law.

E. Modification or Amendment of Contracts

1. Amendments

If the terms of a Contract require modification, the Contract must be formally amended, in writing, as follows:

- a) An amendment should contain the same degree of specificity for changes that the original Contract contained for the same item.
- b) The Executive Director or his designee may amend any Contract when the amount of the Contract, including the amendment, is less than the applicable dollar threshold set forth in Section II.
- c) Only work within the original advertised scope of services will be added by a contract amendment. The addition of work outside the original advertised scope of work will be ineligible for reimbursement.

2. Supply, Special Services, and A&E Contracts

- a) The Executive Director or his designee may amend any Supply Contract, Special Service Contract, or A&E Contract when the amount of the Contract, including any amendment, is \$10,000 or less.
- b) The Executive Director or his designee may amend such a Contract when the amount of the Contract, including any amendment, is more than \$10,000 if the entire Contract amount is to be paid by any other entity.
- c) All modifications or amendments of Supply Contracts that do not meet the requirements of subdivisions 1 or 2 above will be approved by the Commission.

3. Real Property Contracts

The Executive Director or his designee may amend any real property lease for improvements or alterations, or both, so long as the term does not exceed three years, and the rental amount does not exceed \$2,500 per month.

F. Contract Forms and Approvals

1. Written Contracts

All federally funded Contracts exceeding \$2,500 must be written agreements. All State and locally funded Contracts exceeding \$5,000 must be written agreements. The Executive Director may waive the requirement for a written agreement in cases of public emergency or when the Executive Director determines that it is reasonably necessary for the conduct of NCTC's business, in which case the Commission will be notified as a matter of information at its next meeting.

2. Approval By Legal Counsel

Written Contracts may be approved as to form by legal counsel prior to execution, as determined by the Executive Director or recommended by the Commission.

3. Time of Completion

All Contracts will specify the time within which the supplies or work will be furnished to NCTC and may provide for liquidated damages for failure to comply. The Executive Director may extend such time for delays caused by NCTC, acts of God, weather, strikes, or other circumstances over which the contractor has no control. The Commission may extend such time for any reason it deems appropriate, including those causes for which the Executive Director may grant an extension of time.

4. Contract Prohibitions

a) Contract Splitting

No officer or employee of NCTC will split or separate into smaller units any Contract for the purpose of evading the provisions of these Procedures. Splitting or separating a transaction means reducing the amount of any Contract with knowledge that additional supplies or additional work, after such reduction, will be required within the same budgetary term.

b) Collusion With Bidders

No officer or employee of NCTC will:

- 1) Aid or assist a bidder in securing a Contract at a higher price than that proposed by any other bidder;
- 2) Favor one bidder over another;
- 3) Willfully mislead any bidder regarding the character of the supplies or work called for;
- 4) Knowingly accept supplies or work of a quality inferior to that called for by the Contract;
- 5) Knowingly represent to NCTC the receipt of a greater amount, or different kind, of supplies or work than has been actually received; or

- 6) Draft any invitation to bid, or cause it to be drafted, in such manner as to limit the bidding, directly or indirectly, to any one bidder.

VII. MANAGEMENT OF CAPITAL ASSETS

In the private sector, companies track depreciation for tax purposes. NCTC, as a governmental agency, does not have a tax deduction for asset depreciation; however, government must manage assets purchased with tax dollars in an appropriate manner (i.e. not purchasing new equipment needlessly, or keeping equipment that is obsolete and inefficient). Government tracking of depreciation involves asset management and replacement. There is no set rule for selection of threshold or number of years to depreciate items; rather, it depends on judgment and experience. The following procedures have been accepted by NCTC's fiscal auditors.

1. Items costing \$1,000 or more are considered Capital Assets and must be included on the annual Depreciation Schedule. Items under \$1,000 are classified as Equipment Expense and are not depreciated.
2. Computers will be depreciated over three years.
3. Copiers will be depreciated over seven years.
4. Phone systems will be depreciated over ten years.
5. Furniture that is a Capital Asset will be depreciated over fifteen years.

VIII. DISPOSAL OF SURPLUS PROPERTY

A. Fixed Assets

At the discretion of the Executive Director, any item under \$300, or any fixed asset item costing over \$300 but under \$1,000, considered no longer useful, will be disposed of in a safe and economical manner.

B. Capital Assets

At the direction of the Executive Director, Capital Assets considered no longer useful will be listed and presented to the NCTC for review and approval for disposal by resolution.

Upon approval of a resolution, the Executive Director may dispose of surplus property, at his discretion, to charitable nonprofit organizations for the benefit of the general welfare of the community in matters such as recreation, education, aid to the destitute, community beautification, or any other activity in which NCTC may legitimately participate. The organization accepting such property will sign a statement that the surplus property will be used for the purpose designated by the Executive Director, and if the property is ever diverted to other than a charitable use, the Executive Director may reclaim the property.

IX. RECORDS RETENTION POLICY

NCTC's records are a valuable resource. This policy provides procedures to ensure NCTC's records are retained and maintained in a consistent, orderly, secure and accessible manner. These procedures are intended to ensure the safekeeping of NCTC records with administrative, legal, fiscal, programmatic or historical value; provide ease of access to NCTC records by staff; ensure access to

NCTC records by members of the public in accordance with applicable law; and provide the necessary guidance to ensure proper records management, including retention and disposition.

Procedures

1. Policy Statement

- 1.1 Public Records include any writing containing information related to the conduct of the public's business prepared, owned, used, or retained by NCTC, regardless of physical form or characteristics. These records include but are not limited to, correspondence, memoranda, emails, phone logs, reports, maps, contracts, project files, photographic files, digital imagery data, prints, charts, drawings, machine readable records, videos, and audio tapes.
- 1.2 Records must be maintained in accordance with the attached NCTC Records Retention Schedule until their retention period expires, after which the records should be disposed of promptly and appropriately. Records can be maintained for time periods in excess of the retention period in the schedule if the records are still needed for reference.

2. Application

This policy applies to all persons, including employees, consultants, and contractors, responsible for the generation and/or maintenance of NCTC records.

3. Public Records

- 3.1 Records that pertain to "housekeeping" or other transitory matters that will not be needed for future reference may be disposed of immediately. Draft documents including preliminary drafts, notes, and interagency and intra-agency memoranda that are no longer needed for use or reference may be disposed of immediately.
- 3.2 Unless otherwise provided for, public records must be kept for a minimum of two years after the date they are finalized. Some records must be kept for longer than two years and the retention period for most records is contained in the Records Retention Schedule. The time periods shown in the Records Retention Schedule should be followed unless a document needs to be retained for a longer time period than that shown because the custodian believes the record is still needed for reference. All of the time periods shown for retention begin on the date the record is put in its final form.
- 3.3 Records that are purely personal in nature such as shopping lists, personal email, or correspondence from a friend should not be treated as public records. In order to prevent a claim that such records are subject to disclosure, and to prevent an unnecessary burden on NCTC resources, however, records unrelated to NCTC business should be purged from NCTC computers and files.
- 3.4 After a public record has been maintained for the required time period it should be disposed of promptly. If records to be disposed of under the retention schedule contain confidential or trade secret information, the record shall be shredded.

- 3.5 The Records Retention Schedule should be periodically reviewed and revised as needed.
- 3.6 Records may be kept in electronic form instead of hardcopy form if the following conditions are met:
 - 3.6.1 The record is reproduced by photograph, microphotograph or electronically recorded video image on a magnetic surface, and recorded in an electronic data-processing system, on optical disk, or on film or any other medium which does not permit additions, changes, or deletions of the information or image in or on the original record.
 - 3.6.2 The media selected for storing the records in electronic form is considered permanent and reliable.
 - 3.6.3 The media selected for storing the records in electronic form does not prevent the records from being easily accessible.
 - 3.6.4 The copy must be kept in a safe and separate place for security purposes.
- 3.7 Retention periods for records required for current litigation, audit, or environmental review must be suspended and the records maintained in their original condition and format until the matter is resolved.
- 3.8 Duplicates of hardcopy records may be destroyed at any time as long as at least one accurate and legible copy is maintained for the time period set forth in the Records Retention Schedule.

4. Project File Maintenance

The project manager(s) and administrative personnel (“project team members”) should maintain centralized files for each project. The project files should not contain preliminary drafts, working papers, notes, or “housekeeping” memoranda or emails that are not needed for future use or reference.

5. Records Containing Confidential or Trade Secret Information

Records created at or received by NCTC containing confidential or trade secret information must be marked as such and filed in a locked cabinet or other location where the records will be secure and inaccessible to third parties. Staff should take all necessary steps to ensure that such records are not copied or disclosed to third parties. Once a record is submitted to NCTC by a company or individual it immediately becomes a public record unless that party has expressly designated the record or portion thereof as confidential, proprietary, or trade secret. For example, unless a proposal or price list from a consultant or contractor is clearly marked as confidential or trade secret it will automatically become a public record. Note, however, that even if a consultant or contractor marks a document as “confidential,” “proprietary,” or “trade secret” this will not necessarily exempt the document from disclosure under the California Public Records Act or other applicable laws.

NCTC RECORDS RETENTION SCHEDULE

Record Type	Retention Period	Authority	Comments
Board of Directors:			
Agendas, Agenda Packets & Meeting Minutes	Permanent	Gov. Code 34090 Gov. Code 60201	
Bylaws, Board Rules and other governing documents	Permanent		
Public Hearing Notices	Permanent		
Ordinances and Resolutions	Permanent	Gov. Code 60201	5 years if repealed or found invalid
Tapes from Meetings	90-days	Gov. Code 34090.7	
Committees:			
Agendas & Meeting Minutes	Permanent		
Committee Packets	Current Year + 2 years		Committees do not take action, but make recommendations to the Board
Conflict of Interest:			
Conflict of Interest Forms (Form 700)	7 years	Gov. Code 81009	
Conflict of Interest Policies and Procedures	Permanent	FPPC	
Formal Inquiries and Responses	4 years		
Contracts:			
Protests and Responses	Project Completion + 5 years	CCP 337.2	
Requests for Proposals, Requests for Qualifications	Project Completion + 5 years		
Contracts, MOUs and Subrecipient Agreements	Completion + 5 years		
Correspondence:			
General Correspondence (Letters and Email)	2 years		
Substantive and Necessary Correspondence (including Email) About a Specific Ongoing Project	Project Completion + 5 years		
Public Policy Correspondence	Permanent		
Environmental:			
EIR/EIS Administrative Drafts and other documents part of EIR/EIS administrative record prepared by NCTC as lead agency	Project Completion + 1 year	Gov. Code 34090 CEQA Guidelines	
Environmental Impact Reports (EIR/EIS) and Initial Studies prepared by NCTC as lead agency	Permanent	Gov. Code 34090 CEQA Guidelines	
General Administration:			
Directives, Policies & Procedures, and Handbooks (Non-Personnel)	5 years past the date it ceased to be effective.		
Necessary Staff Working Files	3 years		
Records Kept for Informational or Reference Purposes Only	Keep while matter is active		
Staff Meeting Notices & Agendas	2 years		

Insurance:			
Insurance Policies	Permanent		
Workers' Compensation Claims, if provision is made for future medical care	Permanent		
All Other Claims against NCTC	Active + 5 years		"Active" until litigation is complete or matter settled
Legal and Legislation:			
Board Actions	Permanent		
FPPC Documentation (other than Form 700)	5 years		
Legal Opinions	Permanent		
Lobbyist Correspondence	3 years		
Litigation Files	Active + 5 years – or kept Permanently if it is a case of significant importance or precedent		"Active" until litigation is complete or matter settled
Settlement Agreements	Permanent		
Public Records Requests	2 years		
Quarterly Lobbying Reports	Permanent		
Public Relations and Information:			
Advertising and Graphics	2 years		
Brochures, Reports, etc.	2 years	Gov. Code 34090	
Newsletters	2 years		
Press Releases	2 years		
Public ceremonies and events	2 years		
Safety:			
Training Records	3 years		
Personnel:			
IRS Forms (W-4's, W-2's)	Audit + 4 years		
Personnel Rules, Procedures and Handbooks	7 years past the date that the Rule, Procedure or Handbook ceased to be effective		
Personnel agreements, including employment contracts	7 years from the termination of the agreement		
Personnel files	7 years from last date of employment		
Payroll records	7 years		
Finance and Accounting:			
Bank Statements and Checks	4 years		
Financial Statements	Permanent		
Invoices	4 years		
Deposit Copies	3 years		
Audits	Permanent		
Grant Agreements and Funding Contracts	Project Termination + 5 years		
Overall Work Program (OWP), adopted (original and final only)	Permanent		

Attachment A

NCTC Subrecipient Agreement

SUBRECIPIENT AGREEMENT

BETWEEN THE

NEVADA COUNTY TRANSPORTATION COMMISSION

AND

FOR THE *[Insert Brief Project Description,]*

THIS SUBRECIPIENT AGREEMENT is made and entered into effective _____, 20__, by and between the _____ (“**Subrecipient**”), and the **NEVADA COUNTY TRANSPORTATION COMMISSION** (“**NCTC**”), the Regional Transportation Planning Agency for Nevada County, California.

WHEREAS, NCTC has been awarded *[insert description of grant or funding]* administered through the California Department of Transportation (“Caltrans”), to implement and support *[insert description of type of project or activities]*; and

WHEREAS, Subrecipient is eligible to apply for and receive federal financial assistance as a public body corporate and politic of the State of California; and

WHEREAS, Subrecipient has agreed to provide *[insert description of services]*, consistent with NCTC’s adopted Overall Work Program, and to participate in the regional planning process; and

WHEREAS, the parties wish to enter into this Subrecipient Agreement (“**Agreement**”) to document the terms and conditions of NCTC’s reimbursement to Subrecipient for Subrecipient’s services.

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. **Scope of Work:** Subrecipient will *[insert description of services]* as identified in “Exhibit A,” attached hereto and incorporated herein by this reference (hereinafter “**Project**”). Exhibit A includes a detailed scope of the work to be performed by Subrecipient, as well as Project deliverables, a timeline, and budget. Any proposed amendment to Exhibit A must be agreed to in advance by the parties pursuant to a written amendment in accordance with Section 11 and is subject to approval by Caltrans, FHWA or any other federal or state agency having jurisdiction.
2. **Time of Performance:**
 - a. Subrecipient will commence work upon the effective date of this Agreement and will complete work as expeditiously as is consistent with generally accepted standards of professional skill and care and the orderly progress of work.

Subrecipient agrees to follow, and to require its consultants to follow, the timeline identified in Exhibit A. If a substantive change to the identified timeline is desired, Subrecipient's Project Manager will provide an immediate written request for approval to the NCTC's Project Manager, including the reasons for the requested change. Approval by NCTC's Project Manager will not be unreasonably withheld.

- b. All work will be completed and this Agreement will expire on [date], unless otherwise terminated as provided for in this Agreement or extended by written agreement between the parties, which agreement is subject to approval by Caltrans, FHWA or any other federal or state agency having jurisdiction.
3. Compliance with Laws: Subrecipient will comply with all applicable federal, state, and local laws, codes, ordinances, regulations, orders, circulars, and directives, including, without limitation, all federal regulatory requirements associated with the applicable federal funding.
4. Funding Amount: Under this Agreement, Subrecipient will be reimbursed by NCTC for Subrecipient's staff time related to the Project. Subrecipient will also be reimbursed for all related consultant invoices paid by Subrecipient. NCTC will pay Subrecipient in full for all services performed pursuant to this Agreement, a total sum not to exceed \$_____. Subrecipient will not perform work, nor be required to perform work, outside those services specified in this Agreement or which would result in billings in excess of \$_____, without the prior written agreement of both parties. In no instance will NCTC be liable for any unauthorized or ineligible costs.
5. Reporting and Payment:
 - a. On a quarterly basis, Subrecipient will provide NCTC with both a written report on the progress made on the Scope of Work in Exhibit A and an invoice for reimbursement pursuant to Subsection 5(b) of this Agreement.
 - b. Payments to Subrecipient will be made in arrears. Subrecipient will submit a detailed and properly documented invoice for reimbursement not more often than quarterly, which will include the following: (i) a description of the work performed, (ii) a detailed accounting of costs incurred, and (iii) evidence that Subrecipient has already incurred costs for the project.
 - c. Subrecipient will be notified within ten (10) business days following receipt of its invoice by NCTC of any circumstances or data identified in Subrecipient's invoice that would cause withholding of approval and subsequent payment. Subrecipient's invoice will include documentation of reimbursable expenses and billed items sufficient for NCTC, in its opinion, to substantiate billings. NCTC reserves the right to withhold payment of disputed amounts.
 - d. Subrecipient agrees that the Contract Cost Principles and Procedures, found in 2 CFR, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Chapter I Part 200 et seq (formerly found in the Office of Management and Budget Circular A-87, Revised "Cost Principles for State, Local, and Indian Tribal Governments") will be used to determine the allowability of individual items of cost.

- e. NCTC also agrees to comply with Federal procedures in 49 CFR, Part 18, “Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments.”
 - f. Any costs for which payment has been made to NCTC that are determined by subsequent audit or are otherwise determined to be unallowable under 2 CFR, Chapters I and II, Parts 200, 215, 220, 225, and 230 (formerly set forth in 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31 et seq.; Office of Management and Budget Circular A-87, Revised “Cost Principles for State, Local, and Indian Tribal Governments”; or 49 CFR, Part 18, Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments), 23 CFR, and any other applicable State or Federal Regulations, are subject to repayment by Subrecipient to NCTC. Disallowed costs must be reimbursed to NCTC within sixty (60) days unless NCTC approves in writing an alternative repayment plan.
 - g. Subrecipient will comply with, and will require its subcontractors to comply with, the requirements for non-State employee travel and subsistence (per diem) expenses found in the California Department of Transportation (“Caltrans”) Travel Guide, Non-State Employee Travel (referencing the current California Department of Personnel Administration rules) at the following link: <http://www.dot.ca.gov/hq/asc/travel/index.htm>. Lodging rates will not exceed rates authorized to be paid non-State employees unless written verification is supplied that such rates are not commercially available to Contractor and/or its subcontractors at the time and location required as specified in the Caltrans Travel Guide Exception Process.
 - h. Subrecipient and subcontractors will establish and maintain an accounting system conforming to Generally Accepted Accounting Principles (GAAP) which segregates and accumulates reasonable, allowable, and allocable costs and matching funds for work elements by line item and produces quarterly reports which clearly identify reimbursable costs and other expenditures and will provide support for all invoices sent to NCTC.
 - i. Any subcontract in excess of \$25,000 entered into as a result of this Agreement, will contain all of the provisions of Subsections 5(e) through 5(h) above.
6. Independent Contractor: Subrecipient, and the agents and employees of Subrecipient, in the performance of this Agreement, will act as and be independent contractors and not officers or employees or agents of NCTC. Subrecipient, its officers, employees, agents, and subcontractors, if any, will have no power to bind or commit NCTC to any decision or course of action, and will not represent to any person or business that they have such power. Subrecipient has and will retain the right to exercise full control of the supervision of the work and over the employment, direction, compensation and discharge of all persons assisting Subrecipient in the performance of work funded by this Agreement. Subrecipient will be solely responsible for all matters relating to the payment of its employees and contractors, including but not limited to compliance with all laws, statutes, and regulations governing such matters.
7. Termination:
- a. Either party may terminate this Agreement for any reason, with or without cause, at any time, by giving the other party fifteen (15) days written notice. The notice will be deemed served and effective for all purposes on the date it is deposited in the U.S. mail, certified,

return receipt requested, addressed to the other party at the address indicated in Section 15 below.

- b. If either party issues a notice of termination, NCTC will reimburse Subrecipient for work actually performed up to the effective date of the notice of termination, subject to the limitations in Section 5 and less any compensation to Subrecipient for damages suffered as a result of Subrecipient's failure to comply with the terms of this Agreement.
 - c. Subrecipient will have the right to terminate this Agreement in the event NCTC is unable to make required payments, including, without limitation, a failure of Caltrans to appropriate funds. In such event, Subrecipient will provide NCTC with seven (7) days written notice of termination. The notice will be deemed served and effective on the date it is deposited in the U.S. mail, certified, return receipt requested, addressed to NCTC at the address indicated in Section 15. NCTC will make payment to Subrecipient through the date of termination, subject to the provisions of Section 5 above including, but not limited to, the provisions of Subsection 5(d).
8. Assignment: The parties understand that NCTC entered into this Agreement based on the Project proposed by Subrecipient. Therefore, without the prior express written consent of NCTC, this Agreement is not assignable by the Subrecipient either in whole or in part.
 9. Binding Agreement: This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.
 10. Time: Time is of the essence in this Agreement and will follow the timeline set forth in the Scope of Work in Exhibit A, unless modified pursuant to Section 11.
 11. Amendments: No alteration or variation of the terms of this Agreement will be valid unless made in writing and signed by the parties hereto, and no oral understanding or agreement not incorporated herein, will be binding on any of the parties hereto.
 12. Contractors and Subcontractors: Subrecipient will be fully responsible for all work performed by its contractors and subcontractors.
 - a. NCTC reserves the right to review and approve any contract or agreement to be funded in whole or in part using funds provided under this Agreement.
 - b. Any contract or subcontract to be funded in whole or in part using funds provided under this Agreement will require the contractor and its subcontractors, if any, to:
 - (1) Comply with applicable state and federal requirements that pertain to, among other things, labor standards, non-discrimination, the Americans with Disabilities Act, Equal Employment Opportunity, Drug-Free Workplace, 48 CFR, Federal Acquisition Regulations System, Chapter 1, Part 31.000, *et seq.*, 49 CFR, Part 18, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," and 2 CFR, Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards, Chapters I and II, Parts 200, 215, 220, 225, and 230.

- (2) Maintain at least the minimum state-required Workers' Compensation Insurance for those employees who will perform the work or any part of it.
- (3) Maintain unemployment insurance and disability insurance as required by law, along with liability insurance in an amount that is reasonable to compensate any person, firm, or corporation who may be injured or damaged by the Subrecipient or any subcontractor in performing work associated with this Agreement or any part of it.
- (4) Retain all books, records, accounts, documentation, and all other materials relevant to this Agreement for a period of three (3) years from the date of termination of this Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
- (5) Permit NCTC and/or its representatives, upon reasonable notice, unrestricted access to any or all books, records, accounts, documentation, and all other materials relevant to this Agreement for the purpose of monitoring, auditing, or otherwise examining said materials.
- (6) Comply with all applicable requirements of Title 49, Part 26 of the Code of Federal Regulations, as set forth in Section 28.

13. Indemnity: Subrecipient specifically agrees to indemnify, defend, and hold harmless NCTC, its directors, officers, agents, and employees (collectively the "Indemnitees") from and against any and all actions, claims, demands, losses, costs, expenses, including reasonable attorneys' fees and costs, damages, and liabilities (collectively "Losses") arising out of or in any way connected with the performance of this Agreement, excepting only Losses caused by the sole, active negligence or willful misconduct of an Indemnitee. Subrecipient will pay all costs and expenses that may be incurred by NCTC in enforcing this indemnity, including reasonable attorneys' fees. The provisions of this Section will survive the expiration, termination, or assignment of this Agreement.

14. Audit, Retention and Inspection of Records:

- a. NCTC or its designee, including but not limited to any State or Federal agency, will have the right to review, obtain, copy, and audit all books, records, computer records, accounts, documentation, and any other materials (collectively "Records") pertaining to performance of this Agreement, including any Records in the possession of any contractors or subcontractors. Subrecipient agrees to provide NCTC or its designee with any relevant information requested and will permit NCTC or its designees access to its premises, upon reasonable notice, during normal business hours, for the purpose of interviewing employees and inspecting and copying such Records for the purpose of determining compliance with any applicable federal and state laws and regulations. Subrecipient further agrees to maintain such Records for a period of three (3) years after final payment under the Agreement, or three (3) years from the conclusion or resolution of any and all audits or litigation relevant to this Agreement and any amendments, whichever is later.
- b. If so directed by NCTC upon expiration of this Agreement, Subrecipient will cause all Records relevant to the Scope of Work to be delivered to NCTC as depository.

15. **Project Managers:** NCTC's Project Manager for this Agreement is _____, unless NCTC otherwise informs Subrecipient in writing. With the exception of notice of termination sent by certified mail pursuant to Section 7 above, any notice, report, or other communication required by this Agreement will be mailed by first-class mail to the NCTC's Project Manager at the following address:

[name, position]
Nevada County Transportation Commission
101 Providence Mine Road, Suite 102
Nevada City, California 95959
Telephone: (530) 265-3202

Subrecipient's Project Manager for this Agreement is _____. No substitution of Subrecipient's project manager is permitted without prior written agreement by NCTC, which agreement will not be unreasonably withheld. With the exception of notice of termination sent by certified mail pursuant to Section 7(a) above, any notice, report, or other communication to Subrecipient required by this Agreement will be mailed by first-class mail to:

[name, position]
[jurisdiction]
[address]
[city, state, zip]
[telephone]

16. **Successors:** This Agreement will be binding on the parties hereto, their assigns, successors, administrators, executors, and other representatives.
17. **Waivers:** No waiver of any breach of this Agreement will be held to be a waiver of any prior or subsequent breach. The failure of NCTC to enforce at any time the provisions of this Agreement or to require at any time performance by the Subrecipient of these provisions, will in no way be construed to be a waiver of such provisions, nor to affect the validity of this Agreement or the right of NCTC to enforce these provisions.
18. **Litigation:** Subrecipient will notify NCTC immediately of any claim or action undertaken by it or against it that affects or may affect this Agreement or NCTC, and will take such action with respect to the claim or action as is consistent with the terms of this Agreement and the interests of NCTC.
19. **Americans with Disabilities Act (ADA) of 1990:** By signing this Agreement, Subrecipient assures NCTC that it complies with the Americans with Disabilities Act (ADA) of 1990 (42 U.S.C. § 12101, et seq.), which prohibits discrimination on the basis of disability, as well as all applicable regulations and guidelines issued pursuant to the ADA. Subrecipient also agrees that it will award no construction contract unless its plans and specifications for such facilities conform to the provisions of California Government Code section 4450 and 4454, if applicable.
20. **Compliance with Non-discrimination and Equal Employment Opportunity Laws:** It is NCTC's policy to comply with state and federal laws and regulations including Title VI of the Civil Rights Act of 1964, ADA, and other federal discrimination laws and regulations, as well as the Unruh Civil Rights Act of 1959, the California Fair Employment and Housing Act, and other California State discrimination laws and regulations. NCTC does not discriminate on the basis

of race, color, sex, creed, religion, national origin, age, marital status, ancestry, medical condition, disability, sexual orientation or gender identity in conducting its business. NCTC prohibits discrimination by its employees, Subrecipient, and Subrecipient's contractors and consultants.

Subrecipient hereby certifies, under penalty of perjury under the laws of California, that it complies with, and that Subrecipient will require that its contractors and subcontractors comply with, the following non-discrimination and equal opportunity laws. Any failure by Subrecipient to comply with these provisions will constitute a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as NCTC may deem appropriate.

- a. Subrecipient and its contractors and subcontractors will comply with all provisions prohibiting discrimination on the basis of race, color, or national origin of Title VI of the Civil Rights Act of 1964, as amended, 42 U.S.C. §§ 2000d et seq., with U.S. D.O.T. regulations, "Nondiscrimination in Federally-Assisted Programs of the Department of Transportation - Effectuation of Title VI of the Civil Rights Act", 49 C.F.R. Part 21, and with any applicable implementing federal directives that may be issued.
- b. Subrecipient and its contractors and subcontractors will comply with all applicable equal employment opportunity (EEO) provisions of 42 U.S.C. §§ 2000e, implementing federal regulations, and any applicable implementing federal directives that may be issued. Subrecipient and its contractors and subcontractors will ensure that applicants and employees are treated fairly without regard to their race, color, creed, sex, disability, age, or national origin.
- c. Subrecipient and its contractors and subcontractors will act in accordance with Title VI and will not unlawfully discriminate, harass, or allow harassment, against any employee or applicant for employment because of sex, sexual orientation, race, color, ancestry, religion, religious creed, national origin, physical disability (including HIV and AIDS), mental disability, medical condition, age or marital status. Subrecipient and its contractors and subcontractors will insure that the evaluation and treatment of their employees and applicants for employment are free from such discrimination and harassment. Subrecipient and its contractors and subcontractors will comply with all applicable federal and state employment laws and regulations including, without limitation, the provisions of the California Fair Employment and Housing Act (Government Code § 12900, et seq.) and the applicable regulations promulgated thereunder (California Code of Regulations, Title 2, § 7285.0, et seq.), as well as Title 2, California Administrative Code, Section 8103. The applicable regulations of the Fair Employment and Housing Commission implementing Government Code §§ 12990 (a-f), set forth in Chapter 5 of Division 4 of Title 2 of the California Code of Regulations, are incorporated into this Agreement by reference and made a part hereof as if set forth in full. Subrecipient and its contractors and subcontractors will give written notice of their obligations under this clause to labor organizations with which they have a collective bargaining or other agreement.
- d. Subrecipient and its contractors will include the non-discrimination and equal employment opportunity provisions of this section (provisions a. through c. above) in all contracts to perform work funded under this Agreement.

21. Drug-Free Certification: By signing this Agreement, Subrecipient hereby certifies under penalty of perjury under the laws of the State of California that Subrecipient will comply with the requirements of the Drug-Free Workplace Act of 1990 (Government Code § 8350, et seq.) and will provide a drug-free workplace by taking the following actions:
- a. Publish a statement notifying employees that unlawful manufacture, distribution, dispensation, possession, or use of a controlled substance is prohibited, and specifying actions to be taken against employees for violations.
 - b. Establish a Drug-Free Awareness Program to inform employees about:
 - (1) The dangers of drug abuse in the workplace;
 - (2) The person's or the organization's policy of maintaining a drug-free workplace;
 - (3) Any available counseling, rehabilitation, and employee assistance programs; and
 - (4) Penalties that may be imposed upon employees for drug abuse violations.
 - c. Every employee of Subrecipient who works under this Agreement will:
 - (1) Receive a copy of Subrecipient's Drug-Free Workplace Policy Statement; and
 - (2) Agree to abide by the terms of Subrecipient's Statement as a condition of employment on this Agreement.
22. Union Organizing: By signing this Agreement, Subrecipient hereby acknowledges the applicability of Government Code § 16645 through § 16649 to this Agreement, excluding § 16645.2 and § 16645.7.
- a. Subrecipient will not assist, promote, or deter union organizing by employees performing work on this Agreement if such assistance, promotion, or deterrence contains a threat of reprisal or force, or a promise of benefit.
 - b. Subrecipient will not meet with employees or supervisors on NCTC or state property if the purpose of the meeting is to assist, promote, or deter union organizing, unless the property is equally available to the general public for meetings.
23. Prohibition of Expending State or Federal Funds for Lobbying:
- a. Subrecipient certifies, to the best of its knowledge or belief, that:
 - (1) No State or Federal appropriated funds have been paid or will be paid, by or on behalf of Subrecipient, to any person for influencing or attempting to influence an officer or employee of any State or Federal agency, a Member of the State Legislature or United States Congress, an officer or employee of the Legislature or Congress, or any employee of a Member of the Legislature or Congress in connection with the awarding of any State or Federal contract, the making of any State or Federal grant, the making of any State or Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any State or Federal contract, grant, loan, or cooperative agreement.

- (2) If any funds, other than Federally appropriated funds, have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or any employee of a Member of Congress in connection with this Federal Agreement, Subrecipient will complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.
- b. This certification is a material representation of fact upon which reliance was placed when this Agreement was entered into. Submission of this certification is a prerequisite for making or entering into this Agreement imposed by Section 1352, Title 31, U.S. Code. Any person who fails to file the required certification will be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.
- c. Subrecipient also agrees by signing this Agreement that it will require that the language of this certification be included in all lower tier contracts and subcontracts.

24. Prevailing Wage and Labor Requirements:

- a. Should Subrecipient award any construction contracts utilizing Federal funds under this Agreement, Subrecipient agrees to comply with all pertinent statutes, rules and regulations promulgated by the federal government including, but not limited to, (i) prevailing wage requirements of the Davis Bacon Act (40 U.S.C. §276a, *et seq.*) and related regulations (29 CFR Part 5); (ii) anti-kickback and payroll records requirements of the Copeland "Anti-Kickback" Act (40 U.S.C. §276c and 18 U.S.C. §874) and related regulations (29 CFR Part 3); and (iii) workweek computation and overtime requirements of the Contract Work Hours and Safety Standards Act (40 U.S.C. §327-333) and related regulations (29 CFR Part 5).
- b. Should Subrecipient award any "public work" contract, as defined by California Labor Code Section 1720, utilizing State funds under this Agreement, Subrecipient agrees to comply with all pertinent California statutes, rules, and regulations including, but not limited to, prevailing wage provisions of Labor Code Section 1771.
- c. Any contract or subcontract entered into as a result of this Agreement will contain all of the provisions of this section.

25. Disadvantaged Business Enterprise (DBEs) Participation: This Agreement is subject to, and Subrecipient agrees to comply with, Title 49, Part 26 of the Code of Federal Regulations (CFR) entitled "Participation by Disadvantaged Business Enterprises in Department of Transportation (DOT) Financial Assistance Programs." DBE's and other small businesses, as defined in Title 49 CFR Part 26, are encouraged to participate in the performance of agreements financed in whole or in part with federal funds; however, DBE participation is not a condition of award. Subrecipient agrees to complete the NCTC DBE Information Form so that NCTC may compile statistics for federal reporting purposes. The NCTC DBE Information Form is attached hereto as "Exhibit B" and incorporated herein by this reference.

- a. Non-Discrimination: Subrecipient will not discriminate on the basis of race, color, national origin, or sex in the performance of this Agreement. Subrecipient will carry out applicable requirements of 49 CFR Part 26 in the award and administration of United States Department of Transportation assisted contracts. Failure by Subrecipient to carry out these

requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy, as NCTC deems appropriate.

- b. Prompt Payments to DBE and Non-DBE Subcontractors: Subrecipient will insert the following clauses in any contract funded under this Agreement:
- (1) A prime contractor or subcontractor will pay to any subcontractor not later than 10-days of receipt of each progress payment, in accordance with the provision in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-day rule is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30-days may take place only for good cause and with Subrecipient's prior written approval. Any violation of Section 7108.5 will subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement will not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
 - (2) Subrecipient will hold retainage from the prime contractor and will make prompt and regular incremental acceptances of portions, as determined by Subrecipient of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor will return all monies withheld in retention from all subcontractors within 30-days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by Subrecipient. Any delay or postponement of payment may take place only for good cause and with Subrecipient's prior written approval. Any violation of these provisions will subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement will not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- c. Records: Subrecipient will maintain records of all contracts and subcontracts entered into with certified DBEs and records of materials purchased from certified DBE suppliers. The records will show the name and business address of each DBE contractor, subcontractor or vendor and the total dollar amount actually paid each DBE contractor, subcontractor or vendor. The records will show the date of payment and the total dollar figure paid to all firms. Upon completion of the contract, a summary of these records will be prepared and submitted to NCTC.
- d. Termination of a DBE: In conformance with 49 CFR Section 26.53:
- (1) Subrecipient will not permit its contractor to terminate a listed DBE subcontractor unless the contractor has received prior written authorization from Subrecipient's Project Manager. Subrecipient's Project Manager will authorize termination only if the

Project Manager determines that the contractor has good cause to terminate the DBE subcontractor. As used in this Section, “good cause” includes those circumstances listed in 49 CFR Section 26.53(f)(3).

- (2) Prior to requesting Subrecipient’s authorization to terminate and/or substitute a DBE subcontractor, the contractor will give notice in writing to the DBE subcontractor, with a copy to Subrecipient, of its intent to request termination and/or substitution, and the reason for the request. The DBE subcontractor will have five days to respond to the contractor’s notice and state the reasons, if any, why it objects to the proposed termination of its subcontract and why Subrecipient should not approve the contractor’s action. Subrecipient may, in instances of public necessity, approve a response period shorter than five days.
 - (3) If a DBE subcontractor is terminated or fails to complete its work for any reason, the contractor will be required to make good faith efforts to replace the original DBE subcontractor with another DBE.
 - e. DBE Certification and Decertification: If a DBE subcontractor is decertified during the life of the contract, the decertified subcontractor will notify the contractor in writing with the date of decertification. If a subcontractor becomes a certified DBE during the life of the contract, the subcontractor will notify the contractor in writing with the date of certification. The contractor will then provide to Subrecipient’s Project Manager written documentation indicating the DBE’s existing certification status.
 - f. Noncompliance by Subrecipient: Subrecipient’s failure to comply with any requirement of this Section is a material breach of this Agreement, which may result in the termination of this Agreement or such other remedy as NCTC may deem appropriate.
 - g. Any contract entered into by Subrecipient as a result of this Agreement will contain all of the provisions of this Section.
26. Non-Liability of NCTC: NCTC will not be liable to Subrecipient or any third party for any claim for loss of profits or consequential damages. Further, NCTC will not be liable to Subrecipient or any third party for any loss, cost, claim or damage, either direct or consequential, allegedly arising from a delay in performance or failure to perform under this Agreement.
27. Debarment Responsibilities: Subrecipient agrees that it will comply with the provisions of 24 CFR Part 24 relating to the employment, engagement of services, awarding of contracts or funding of any contractors or subcontractors during any period of debarment, suspension or placement in ineligibility status.
28. Costs and Attorneys’ Fees: If either party commences any legal action against the other party arising out of this Agreement or the performance thereof, the prevailing party in such action may recover its reasonable litigation expenses, including court costs, expert witness fees, discovery expenses, and reasonable attorneys’ fees.
29. Governing Law and Choice of Forum: This Agreement will be administered and interpreted under California law as if written by both parties. Any litigation arising from this Agreement will be brought in the Superior Court of Nevada County.

30. Integration: This Agreement represents the entire understanding of NCTC and Subrecipient as to those matters contained herein and supersedes all prior negotiations, representations, or agreements, both written and oral. This Agreement may not be modified or altered except in accordance with Section 11.
31. Severability: If any term or provision of this Agreement or the application thereof to any person or circumstance will, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to persons or circumstances other than those to which it is invalid or unenforceable, will not be affected thereby, and each term and provision of this Agreement will be valid and will be enforced to the fullest extent permitted by law, unless the exclusion of such term or provision, or the application of such term or provision, would result in such a material change so as to cause completion of the obligations contemplated herein to be unreasonable.
32. Headings: The headings of the various sections of this Agreement are intended solely for convenience of reference and are not intended to explain, modify, or place any interpretation upon any of the provisions of this Agreement.
33. Authority: Each person signing this Agreement on behalf of a party hereby certifies, represents, and warrants that he or she has the authority to bind that party to the terms and conditions of this Agreement.
34. Ownership; Permission: Subrecipient represents and warrants that all materials used in the performance of the project work, including, without limitation, all computer software materials and all written materials, produced are owned by Subrecipient or that all required permissions and license agreements have been obtained and paid for by Subrecipient. Subrecipient will defend, indemnify and hold harmless NCTC and its directors, officers, employees, and agents from any claim, loss, damage, cost, liability, or expense to the extent of any violation or falsity of the foregoing representation and warranty.
35. Counterparts: This Agreement may be executed in multiple counterparts, each of which will constitute an original, and all of which taken together will constitute one and the same instrument.
36. Amendments Required by Federal or State Agencies: If the FTA, FHWA, Caltrans, or any other federal or state agency having jurisdiction, requires a change to the terms of this Agreement, the parties will amend this Agreement as necessary, or will terminate it immediately.
37. Ambiguities: The parties have each carefully reviewed this Agreement and have agreed to each term and condition herein. No ambiguity will be construed against either party.
38. Press Releases: Each party will obtain other party's prior written approval of any press releases, or other public outreach materials, that include any reference to such other party or such other party's logo.
39. Rebates, Kickbacks, or Other Unlawful Consideration: Subrecipient warrants that this Agreement was not obtained or secured through rebates, kickbacks or other unlawful consideration, either promised or paid to any NCTC employee. For breach or violation of this warranty, NCTC will have the right, in its discretion: to terminate this Agreement without

liability; to pay only for the value of the work actually performed; or to deduct from the Agreement price, or otherwise recover the full amount of such rebate, kickback or other unlawful consideration.

40. State Prevailing Wage Rates: If the Scope of Work is for a public works project pursuant to California Labor Code Section 1720, *et seq.*, including surveying work, then the following provisions apply:
- a. Subrecipient will comply with the State of California's General Prevailing Wage Rate requirements in accordance with California Labor Code, Section 1770, and all Federal, State, and local laws and ordinances applicable to the work.
 - b. Any subcontract entered into as a result of this Agreement, if for more than \$25,000 for public works construction or more than \$15,000 for the alteration, demolition, repair, or maintenance of public works, will contain all of the provisions of this Section.
 - c. When prevailing wages apply to the services described in the Scope of Work, transportation and subsistence costs will be reimbursed at the minimum rates set by the Department of Industrial Relations (DIR) as outlined in the applicable Prevailing Wage Determination. See <http://www.dir.ca.gov>.

IN WITNESS WHEREOF, THE PARTIES HAVE ENTERED INTO THIS AGREEMENT AS OF THE DATE FIRST APPEARING ABOVE:

[INSERT SUBRECIPIENT]

[name and title]

APPROVED AS TO FORM:

[name]
LEGAL COUNSEL

NEVADA COUNTY TRANSPORTATION COMMISSION

LAWRENCE A. JOSTES
CHAIRMAN

APPROVED AS TO FORM:

RSHS
LEGAL COUNSEL

EXHIBIT A
SCOPE OF WORK

EXHIBIT B
NCTC DBE FORMS

Attachment B

COST OR PRICE ANALYSIS

To be Completed for Federally-Funded Contracts Exceeding \$2,500

A Cost or Price Analysis must be performed in connection with every procurement action involving federal funds, including contract modifications. NCTC staff must make independent estimates before receiving bids or proposals.

A **Cost Analysis** must be performed to determine the reasonableness of the proposed contract price when the Prospective Contractor is required to submit the elements of the estimated cost (i.e., labor hours, overhead, materials, etc.), whenever adequate price competition is lacking, and for sole source procurements, including contract modifications or change orders, unless price reasonableness can be established on the basis of a catalogue or market price of a commercial product sold in substantial quantities to the general public or on the basis of prices set by law or regulation. The elements of a Cost Analysis are set forth in Section I below.

In all other circumstances, a **Price Analysis** must be completed to determine the reasonableness of the proposed contract price. See Section II below.

Separate Cost or Price Analyses are required for each phase of work, as well as for any milestone or task to be subcontracted.

I. COST ANALYSIS

Complete a Cost Analysis Table (sample provided below).

<u>Cost Element</u>	<u>Prospective Contractor's Proposal</u>	<u>Pre-negotiation Objective</u>
Direct Labor	\$	\$
Labor Overhead	\$	\$
Direct Material	\$	\$
Material Overhead	\$	\$
Other Direct Costs	\$	\$
Subtotal	\$	\$
G&A	\$	\$
Subtotal	\$	\$
Profit/Fee	\$	\$
Total	\$	\$

Additional information regarding each cost element category is provided below.

A. Direct Labor

In evaluating a Cost Proposal, staff should consider the following questions:

1. Are the proposed labor rates current actual rates for specific employees or a composite rate for personnel under each labor category?

2. If the labor rates are developed on a specific base rate, what escalation factor (if any), has the Prospective Contractor applied to the base rate? Is that a reasonable factor?
3. Are the proposed labor categories and hours based upon the Prospective Contractor's previous experience?
4. Do the proposed hours correspond to the performance period?

Staff must establish a reasonable cost objective after considering and analyzing all of the available data. Statements to the effect, "The offeror has proposed the same rates on other contracts," are not adequate without discussing how price reasonableness was determined under the other contracts.

B. Labor Overhead, Material Overhead, and General and Administrative (G&A)

Staff must evaluate the basis for labor rates, overhead and G&A.

1. Are the estimated rates based upon recommendations or did staff request an audit of the Prospective Contractor's rates?
2. If not, staff must evaluate the Prospective Contractor's proposed rates in detail (i.e., cost elements included in the indirect pools) for allowability and allocability.

Comparing one Prospective Contractor's rates with those of another is not an acceptable method in any case. Also, comparing this year's proposed rates to last year's rates is not a basis for establishing reasonableness of the currently proposed rate.

C. Direct Material

Staff must make a determination of price reasonableness for the direct material items.

1. Provide a detailed breakdown and compare the Prospective Contractor's material quantities and unit prices, such as copies, brochures, computer discs, etc.
2. Address the basis of the proposed costs for direct materials (based on an engineering estimate, history, etc.) and costs associated with the material (based on catalog prices, oral quotes, written quotes, historical prices, competition, etc.).

If staff takes exception to any material items and/or quantities, what information was relied upon to reach such conclusions? When challenging a cost, explain the basis for the position. "Appears too high" without rationale is not sufficient.

D. Other Direct Costs (ODC)

1. Compare the proposal and the cost estimate for other direct costs, such as computer support, freight, air travel, per diem, and sub-consultants.
2. Provide an analysis of the items included under this cost element. For instance, are the number of trips scheduled considered reasonable by audit or staff's technical evaluation? Are the costs per trip reasonable?
3. Check air travel rates with commercial airlines. How do the proposed costs compare with previous history? Did the contractor apply an escalation factor? Is it reasonable?

E. Profit/Fee Analysis

1. Provide a summary which compares the proposal and NCTC's cost estimate.
2. Compare the Prospective Contractor's proposed profit/fee rate, with NCTC's cost estimate profit/fee rate. Both NCTC and Prospective Contractor should be concerned with profit as a motivator of efficient and effective contract performance. Negotiations aimed merely at reducing prices by reducing profit, without proper recognition of the function of the profit, are not in NCTC's best interest.

II. PRICE ANALYSIS

Where appropriate, staff must utilize Price Analysis techniques to determine whether the contract price is reasonable. Note in the file which technique below was utilized and provide a brief explanation for your selection.

A. Adequate price competition

1. At least two responsible contractors respond to a solicitation.
2. Each contractor must be able to satisfy the requirements of the solicitation.
3. Each contractor must submit priced offers responsive to the expressed requirements of the solicitation.
4. If the conditions above are met, price competition is adequate unless:
 - a) The solicitation was made under conditions that unreasonably deny one or more known and qualified contractors an opportunity to compete.
 - b) The low competitor has such an advantage over other competitors that it is practically immune to the stimulus of competition.
 - c) The lowest final price is not reasonable, and this finding can be supported by facts.

B. Prices set by law or regulation

Prices set by law or regulation are deemed fair and reasonable. NCTC should obtain a copy of the rate schedules set by the applicable law or regulation, then verify that they apply to NCTC's situation and that NCTC is being charged the correct price. For utility contracts, this policy applies only to prices prescribed by an effective, independent regulatory body.

C. Established catalog prices and market prices

Established catalog prices can be used when the following conditions exist:

1. Established catalog prices exist.
2. The items are commercial in nature.
3. They are sold in substantial quantities.
4. They are sold to the general public.

Catalog prices are considered reasonable because commercial demand exists and supplier prices are driven by that demand. Staff must try to ensure that NCTC is getting at least the

same price as other buyers in the market for these items. Staff must be sure that catalogs are not simply internal pricing documents, and will retain a copy of the catalog or at least the page on which the price appears.

Established market prices are based on the same principle as catalog prices except there is no catalog. A market price is a current price established in the usual or ordinary course of business between buyers and sellers free to bargain. These prices must be verified by buyers and sellers who are independent of the Prospective Contractor. If this information is not available from other commercial buyers and sellers, it may be obtained from the Prospective Contractor.

D. Comparison to previous purchases

This determination must be based upon a physical review of the documentation contained in the previous files. Changes in quantity, quality, delivery schedules, the economy, and inclusion of non-recurring costs such as design, capital equipment, etc. can cause price variations. Each differing situation must be analyzed. Staff must also ensure that the previous price was fair and reasonable.

E. Comparison to a valid independent estimate

NCTC staff should review the facts, assumptions, and judgments of an estimate, and review the method and data used in developing the estimate. For example, did prices come from current catalogs or industry standards? Staff must be comfortable with the estimate before relying on it as a basis for determining a price to be fair and reasonable.

F. Value analysis

Value analysis requires staff to look at the item and the function it performs to determine its worth. The decision of price reasonableness remains with the Executive Director or Deputy Executive Director.

Attachment C

HISTORY OF THE PROCUREMENT

Must be Completed for Federally-Funded Contracts and Contract Amendments Exceeding \$2,500

1. Date _____
2. Project Name or Title _____
3. RFP or Contract Number _____
4. Modification Number _____
5. Contract Type [If Time and Materials contract is used, provide explanation of why no other type of contract is suitable] _____
6. Procurement Description (briefly describe the procurement)

7.

<u>Pricing Structure</u>	<u>Cost Estimate</u>
Cost	\$ _____
Fee/Profit _____%	\$ _____
Total Price	\$ _____

RATIONALE FOR METHOD OF PROCUREMENT

1. In this paragraph, describe the acquisition, including a brief history of the requirement, the place of performance, and any other pertinent information. Answer questions such as what it is, why it is needed, and quantity. If this is a contract modification, what events or circumstances contributed to the needed change? State NCTC's estimated amount of the proposed acquisition.
2. In this paragraph, address the extent of competition under the acquisition. If the acquisition is proceeding with other than full and open competition, the procurement file must contain a staff memo describing the justification for using a sole source contract. If applicable, include an explanation of why the use of sealed bid procedures is not appropriate for the acquisition. Additionally, state whether the requirement was publicized in accordance with NCTC's procedures (or if not, cite the exception), how many requests for solicitations were received, and how many offers were received.
3. In this paragraph, include an explanation of the reasons for selecting the type of contract to be used.
4. In this paragraph, include the planned negotiation schedule, and identification of NCTC's negotiating team members by name and position.

Attachment D
Documentation of Quotations Acquired by Telephone

Description of Program Need:	
Specific Description of Product or Service Desired:	
Person Requesting Product or Service:	Date Request Received:

Quotations Received

Name and Address of Vendor Contacted: Bid #1	
Name of Vendor Representative Providing Quote:	Vendor Representative's Telephone Number:
Quote Provided:	
Program Staff Person Soliciting Quote:	Date Quote Provided:

Name and Address of Vendor Contacted: Bid #2	
Name of Vendor Representative Providing Quote:	Vendor Representative's Telephone Number:
Quote Provided:	
Program Staff Person Soliciting Quote:	Date Quote Provided:

Name and Address of Vendor Contacted: Bid #3	
Name of Vendor Representative Providing Quote:	Vendor Representative's Telephone Number:
Quote Provided:	
Program Staff Person Soliciting Bid:	Date Quote Provided:

Attachment E

Guidelines for Criteria and Considerations in Evaluating RFPs

The following are suggested criteria that may be used in evaluating proposals:

1. Does the Prospective Contractor understand the program's problems or needs?
2. Can the Prospective Contractor fit this work into its existing obligations?
3. Is the approach to the problem, recommended method, and procedure reasonable and feasible?
4. Do the expected results, outcomes, and deliverables appear to be achievable in a timely manner, given the approaches, methods and procedures proposed?
5. Does the firm have the organization, management capability and competency, fiscal and personnel resources, and experience to perform the services being sought?
6. Has the firm had experience performing work of similar nature, size and scope?
7. Does the Prospective Contractor's past experience complement the services being sought, or is the Prospective Contractor's past experience appropriate to qualify the proposer to perform these services?
8. What are the professional qualifications of the personnel that the firm will commit to the project?
9. Did the Prospective Contractor allocate sufficient staff resources?
10. Has the Prospective Contractor addressed all goals, objectives, service demands, and required deliverables specified in the RFP?
11. Does the Prospective Contractor appear to have the capacity to manage fiscal resources responsibly?
12. Does the Prospective Contractor have sound fiscal, accounting, and cost-monitoring or budget-monitoring procedures in place?

Attachment F

Sole Source Approval

Project Manager: _____ **Date:** _____

Contractor/Consultant/Vendor: _____

Project Number: _____ **Contract Amount: \$** _____

Project Description: _____

Notice: Contracting without providing for full and open competition is prohibited unless justified on one or more of the boxes below. A requisition must be attached to this form.

THE FOLLOWING MUST BE ANSWERED AFFIRMATIVELY
BY MARKING THE BOXES BELOW, YOU ARE AFFIRMING THAT THE FOLLOWING STATEMENTS ARE TRUE. <input type="checkbox"/> The need for a sole source is not due to a failure to plan or a lack of advanced planning. <input type="checkbox"/> The need for a sole source is not due to concerns about the amount a Federal assistance available to support the procurement (for example, expiration of Federal assistance available for award).

JUSTIFICATION FOR AWARD OF SOLE SOURCE CONTRACT (W/FEDERAL FUNDING)
<input type="checkbox"/> Staff solicited competitive bids and was unable to obtain a responsive bidder. <input type="checkbox"/> The grantor agency providing the federal funds has approved sole source procurement. <input type="checkbox"/> The service is only available from a single source because contractor will be required to use confidential information, intellectual property, or trade secrets owned by contractor. <input type="checkbox"/> The federal grantor agency made the award of funds being used based on RTPA's use of a particular team of contractors, and the contractor listed above is one of the team members identified in the funding application. <input type="checkbox"/> The work is necessary to continue development or production of highly specialized equipment or components thereof, and it is likely that award to another contractor would result in substantial duplication of costs that are not expected to be recovered through competition or when it is likely that award to another contractor would result in unacceptable delays in fulfilling RTPA's needs. <input type="checkbox"/> Sole source is authorized by statute, or only one contractor can comply with specific statutory requirements. <input type="checkbox"/> A national emergency exists, and a particular facility or contractor is needed to achieve mobilization. <input type="checkbox"/> The disclosure of RTPA's needs in a public procurement process would compromise national security. <input type="checkbox"/> A particular expert or neutral person's services are needed for a current protest, dispute, claim, or litigation. <input type="checkbox"/> A competitive procurement is precluded by the terms of an international agreement or treaty or the written directions of a foreign government providing reimbursement for the cost of the supplies or services. <input type="checkbox"/> To establish or maintain an educational or other nonprofit institution or a federally funded research and development center that has or will have an essential engineering, research, or development capability.

ADDITIONAL JUSTIFICATIONS FOR AWARD OF SOLE SOURCE CONTRACT (W/NO FEDERAL FUNDING)

- Only one contractor/consultant/vendor who can provide unique/highly specialized item/ service.
- Economy or efficiency supports award to existing contractor/consultant as a logical follow-on to work already in progress under a competitively awarded contract.
- Cost to prepare for a competitive procurement exceeds the cost of the work or item.
- The item is an integral repair part or accessory compatible with existing equipment.
- The item or service is essential in maintaining research or operational continuity.
- The item/service is one with which staff members who will use the item/service have specialized training and/or expertise and retraining would incur substantial cost in time and/or money.

EXPLANATION: